

# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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## HEARINGS

BEFORE THE

## COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

OCTOBER 18, OCTOBER 25, NOVEMBER 7, DECEMBER 5, AND  
DECEMBER 18, 2001

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**NOMINATION OF CHARLES W. PICKERING,  
SR., OF MISSISSIPPI, TO BE CIRCUIT JUDGE  
FOR THE FIFTH CIRCUIT; M. CHRISTINA  
ARMIJO, OF NEW MEXICO, TO BE DISTRICT  
JUDGE FOR THE DISTRICT OF NEW MEX-  
ICO; KARON O. BOWDRE, OF ALABAMA, TO  
BE DISTRICT JUDGE FOR THE NORTHERN  
DISTRICT OF ALABAMA; STEPHEN P. FRIOT,  
OF OKLAHOMA, TO BE DISTRICT JUDGE  
FOR THE WESTERN DISTRICT OF OKLA-  
HOMA; AND LARRY R. HICKS, OF NEVADA,  
TO BE DISTRICT JUDGE FOR THE DISTRICT  
OF NEVADA**

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**THURSDAY, OCTOBER 18, 2001**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 2:06 p.m., in room S-128, United States Capitol, Hon. Charles Schumer presiding.

Present: Senators Schumer, Leahy, Kennedy, Durbin, and DeWine.

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S.  
SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. The Committee will be in order. I want to thank all of my colleagues and our nominees today for coming.

First, on behalf of all of us, I want to apologize to everybody that we are under such cramped circumstances. We know what an important and happy day this is for the families of those who are coming before us. Usually, we have a much nicer room across the way, but obviously due to the circumstances you have all read about, we can't be there. This room is more beautiful than the one we usually have the hearings in. I think even our Chairman would agree with that, but it is not as big, it is not as large. But we thank you.

We wanted to meet today, and that was a decision made by Senators Daschle and Lott, and Senators Leahy and Hatch, because we think it is very important that we continue the business of the Senate. We want to set a tone for the Nation, and the fact that we are

here today sends a message that while the terrorists may force us to close our buildings for a few days, they won't close the Senate for even one. So we are meeting here, even though our buildings where we usually have the hearings are closed.

So we are getting on with the business of the country and we are not going to let the misguided acts of an evil few keep us from doing our work for the many. So that is why we are here, Republicans and Democrats, united as Americans, to ensure that our courts can continue.

We appreciate all our colleagues who have come, and we will get right on to their statements. And we very much appreciate all the families who have come from far away, many of you, to be here today. Thank you for understanding where we are at.

With that, let me call on Senator DeWine. Senator Sessions is the ranking member of our Subcommittee, but couldn't be here today and is ably substituted for by Senator DeWine from Ohio.

**STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM  
THE STATE OF ARIZONA**

Senator DEWINE. Mr. Chairman, thank you very much. I thank you for holding the hearing today, and I certainly do not want to hold up our colleagues here. It is quite a distinguished group of Senators and Congressmen, and I am looking forward to hearing the testimony.

Senator SCHUMER. Thank you.

Senator Leahy, the Chairman of our Committee.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR  
FROM THE STATE OF VERMONT**

Chairman LEAHY. I appreciate you holding this hearing. This is the Appropriations Committee room. A number of us here serve on Appropriations and are familiar with it. I also apologize to everybody, but we either held it here or we didn't have a hearing at all.

Senator Lott and Senator Daschle are right to have us in session today. I understand the police have required the major office buildings where our offices are to be closed, but I agree with Senator Schumer that the United States Senate should always be open for business; even in a truncated fashion, it should be. We represent a quarter of a billion people and we should be here. Just as we can ask some 17-year-old to stand sentry duty in Kosovo next to a mind field in the middle of the night, U.S. Senators should be here. I am glad to have the two Republican Leaders and the Democratic Leader here.

Actually, we received Judge Pickering's nomination just before the August recess. It was returned and came back on September 5, so this hearing will be on the September 5 nomination. We have had some vacancies in the Fifth Circuit. Since April 7, 1999, the seat previously occupied by Judge Duhe has been vacant.

President Clinton nominated Alston Johnson to fill that vacancy on April 22, 1999. He was never given a hearing by the Judiciary Committee, under different Chairmanship. I mention this just so people understand the history of what is going on here.

Since January 23, 1997, four years ago, Judge Garwood's seat on the Fifth Circuit has been vacant. President Clinton nominated

Jorge Rangel to fill this vacancy in July of 1997. Mr. Rangel was never even given a hearing by this Committee. His nomination was returned to the President without Senate action on October 21, 1998. On September 16, 1999, President Clinton nominated Enrique Moreno to fill the same vacancy. This Committee never gave him a hearing and it was returned.

I just mention this because we had 23 months, 2 nominations, without action. Finally, President Bush withdrew the last of the Clinton nomination names. So in the last 7 years, there has not been a nomination hearing on any of President Clinton's nominees to the Fifth Circuit.

The first nomination hearing on a nominee to the Fifth Circuit in 7 years was the one I noticed for October 4, 2001, at which the Committee heard from Judge Edith Brown Clement, of Louisiana. After 7 years without a single hearing, this hearing for Judge Pickering is the second nomination hearing on a nominee to the Fifth Circuit this Committee has held this month.

I would point out that President Clinton made dozens upon dozens upon dozens of nominations to fill a lot of these vacancies, including on the Fifth Circuit. The predecessor Committee refused to even hold hearings on them. We have held two hearings in a month.

I thank the Senator from New York, who, of all people, with all that has gone on in New York, would have had every reason to cancel these hearings today and gone back to his State, where he has done unbelievable service to the people of New York in trying to put that State and that city back together, as have Governor Pataki and Mayor Giuliani and Senator Clinton, and the Members of the House, Republican and Democrat, from that State. I thank him for holding the hearing.

I will put everything else in the record. Because there seems to be some confusion from the statistics I have heard on the floor, I thought it might be good to put this in the record.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I begin by thanking Senator Schumer, the Chair of the Courts Subcommittee, for also chairing this hearing on judicial nominations. This is an extraordinary time in the Senate. All three Senate office buildings have been closed in the wake of Senate employees testing positive for anthrax. Nonetheless, the Judiciary Committee is seeking to proceed with this hearing today.

Judge Charles W. Pickering was first nominated to a vacancy on the 5<sup>th</sup> Circuit on May 25. Unfortunately, due to the change in the nomination process adopted by President Bush, his ABA peer review was not received until late July, just before the August recess. At that point we were concentrating on expediting the confirmation hearing of the new Director of the Federal Bureau of Investigation, who was confirmed in record time before the August recess. As a result of the objection of the Republican Leader to a request to retain nominations pending before the Senate, including all judicial nominations, through the August recess, that initial nomination of Judge Pickering was required by Senate Rules to be returned to the President without action. Judge Pickering was renominated last month, on September 5. It is that September 5 nomination of Judge Pickering on which we proceed today, less than six weeks after receiving the President's nomination.

Judge Pickering is nominated to serve on the United States Court of Appeals for the Fifth Circuit, which encompasses the States of Mississippi, Texas and Louisiana. This is one of the many Circuits that were left with multiple vacancies through the end of the Clinton Administration. Since April 7, 1999, the seat previously occupied by Judge Duhe of the 5<sup>th</sup> Circuit has been vacant. Although Presi-

dent Clinton nominated Alston Johnson to fill that vacancy only 15 days later, on April 22, 1999. Mr. Johnson was never granted a hearing by the Judiciary Committee, then chaired by Senator Hatch. Since January 23, 1997, Judge Garwood's seat on the 5<sup>th</sup> Circuit has been vacant. Despite the fact that President Clinton nominated Jorge Rangel to fill this vacancy in July of 1997, Mr. Rangel never received a hearing and his nomination was returned to the President without Senate action on October 21, 1998. On September 16, 1999, President Clinton nominated Enrique Moreno to fill the same vacancy. Once again, the nominee did not receive a hearing and his nomination was returned to the President without action.

Over the last several years I have commented on those vacancies as I urged action on the nominations of Jorge Rangel, Enrique Moreno and Alston Johnson to fill vacancies on the 5<sup>th</sup> Circuit. None of those nominees was ever provided a hearing before the Judiciary Committee or acted upon by the Senate. After 15 months without action, Mr. Rangel asked not to be re-nominated. After 15 months and two nominations, Enrique Moreno's nomination was returned to the President without action. After nearly 23 months and two nominations without action, Mr. Johnson's nomination was withdrawn by President Bush in March of 2001.

For the last seven years there has not been a nominations hearing on any of President Clinton's nominees to the 5<sup>th</sup> Circuit. The first nominations hearing on a nominee to the 5<sup>th</sup> Circuit in seven years was the one I noticed for October 4, 2001, at which the Committee heard from Judge Edith Brown Clement of Louisiana, who is another pending nomination of President Bush to the 5<sup>th</sup> Circuit. After seven years without a single hearing, this hearing for Judge Pickering is the second nomination hearing on a nominee to the 5<sup>th</sup> Circuit that this Committee has held this month.

Since 1999, Chief Judge King of the 5<sup>th</sup> Circuit has declared the 5<sup>th</sup> Circuit in a state of emergency such that the hearing and determination of cases and controversies could be conducted by panels of three judges selected without regard to the qualification in 28 U.S.C. § 46(b) that a majority of each panel be composed of judges of the 5<sup>th</sup> Circuit. That means that 5<sup>th</sup> Circuit cases are being heard and decided by three-judge panels with only one 5<sup>th</sup> Circuit judge. I recall when delays in the confirmation process threw the 2<sup>nd</sup> Circuit into a similar emergency in March of 1998, and how hard I worked to get those vacancies filled to end that emergency in my Circuit. By proceeding with Judge Clement and Judge Pickering this Committee has adopted a different approach from the last several years and is proceeding to consider President Bush's nominees to the 5<sup>th</sup> Circuit.

Since the Senate was allowed to reorganize and the Committee membership was set, we have maintained a sustained effort to consider judicial and executive nominees. Today, at our Executive Session, the agenda contained the names of another 13 nominees for United States Attorneys, the Assistant Attorney General for the Office of Legal Counsel and four additional District Court nominees from Oklahoma, Kentucky and Nebraska. We have already confirmed since July more Court of Appeals nominees than were confirmed during the first year of the Clinton Administration and, for that matter, more Court of Appeals nominees than were reported by this Committee in all of last year. With two hearing on two candidates to the 5<sup>th</sup> Circuit this month, I hope that we will soon be able to send that Circuit some help, as well.

At this hearing we consider five more judicial nominees. Along with Judge Pickering, we have before us nominees for District Court vacancies in Alabama, New Mexico, Nevada and another in Oklahoma. Despite the upheaval we have experienced this year with the shifts in the Senate majority and, more importantly, the need to focus our attention on responsible action in the fight against international terrorism, we are ahead of the pace for hearings and confirmations of judges during the first year of the Clinton Administration and during the first year of the first Bush Administration.

The recent vicious attacks on our people have given all of us a heightened awareness of the critical importance of our civil liberties, of the many possible threats to those freedoms, and of the necessity of responding to the challenge of international terrorism without sacrificing what is best about America. This is serious and important work and our federal judges will be a key component in guarding our freedoms. Our system of checks and balances requires that the judicial branch review the acts of the political branches. I will want to be confident that the nominees before us today will take this responsibility seriously and will rely on their experience and on our rich history of judicial precedent to make wise decisions in the challenging times ahead.

I apologize to the nominees, their families and most importantly to the public for the manner in which we are being required to proceed. Our normal hearing room is closed to us. This is a beautiful room and one of my favorite Senate rooms. The

distinguished Chairman of the Appropriations Committee has graciously extended to us his hospitality. We thank him for making it possible for us to proceed at all. Unfortunately, the room does not accommodate the number of people we would like and are used to being able to be present. We are doing the best that we can under these extraordinary circumstances.

Senator SCHUMER. Thank you, Senator Leahy.  
Senator Kennedy?

Senator KENNEDY. No, thank you, Mr. Chairman.

Senator SCHUMER. Then let us move right along to our first panel of witnesses. We will be hearing from the nominees on the second panel. We thank all of you for coming. We know you are very busy, so let's get right on to the business and let me start with Senator Lott to speak about the nomination of Charles W. Pickering for the Fifth Circuit Court of Appeals.

**PRESENTATION OF CHARLES W. PICKERING, SR., NOMINEE TO  
BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, BY HON.  
TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MIS-  
SISSIPPI**

Senator LOTT. Thank you, Chairman Schumer, and thank you, Chairman Leahy. I am even more honored than usual to appear before this fine Committee, because you are having this hearing today in spite of many distractions and in these particular facilities which are not quite large enough, but are very historic, and also because of the number of judges that you are hearing about today, and about Judge Charles Pickering.

One of the reasons why the room is a little crowded is because a few of the very large Pickering clan happen to be in the room, including Ms. Pickering who is over here with four or five of the grandchildren. I lost count of how many grandchildren they have. The son of Judge Pickering, Congressman Chip Pickering, is here today, and Chip's wife, Leisha, is here. This is an outstanding family and I just had to refer to them.

In view of the fact that we have got so many of my colleagues here, I am going to be brief, but let me just say that I have known Judge Pickering for, I guess, about 40 years. I know him to be a gentleman and a scholar.

He has had an outstanding record for 11 years now as a Federal Judge for the Southern District of Mississippi. He is widely supported by Democrats and Republicans and by plaintiff and defense attorneys, and is generally recognized as having been a very active judge and has done an awful lot to clear up the backlog on the docket.

When I said he is a scholar, he graduated first in his class from law school and received his undergraduate degree with honors. He has always been very involved in academic efforts and involved in bar association activities, and he is very much involved in religious and charitable pursuits, also, in Mississippi.

He served on the board of directors of the Institute for Racial Reconciliation at the University of Mississippi, our alma mater. He headed the March of Dimes in his home county. He has headed the Red Cross in his home county. He is involved in the Drug Education Council, and the list is endless.

He also, interestingly enough—you might want to know this—he was one of the forerunners and founders of the cat food—catfish industry in Mississippi.

Senator COCHRAN. Cat food?

[Laughter.]

Senator LOTT. Cat food, yes. Some people think that is what it is good for.

Chairman LEAHY. Does that qualify him?

Senator LOTT. Yes, that does qualify him.

Chairman LEAHY. Senator Cochran has made sure I have gone to some of those places.

Senator LOTT. And raising the catfish and the business aspects of it, and also how you can't fail in some agricultural pursuits. He was the first president of the National Catfish Farmers Association. Now, this is an important part of this man's—

Chairman LEAHY. You keep right on there, Mr. Leader; you keep right on there.

[Laughter.]

Senator LOTT. He has got a breadth of experience and qualifications, and I am pleased that the President has nominated him for the Fifth Circuit and eventually he will be credit to the Fifth Circuit. I apologize for the catfish industry for mutilating that.

Thank you, Mr. Chairman.

[The prepared statement of Senator Lott follows:]

STATEMENT OF HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

I am pleased to be here today to personally introduce Judge Charles Pickering to this Committee, and to Strongly support his nomination to be a United States Court of Appeals Judge for the Fifth Circuit.

As many members of this Committee will recall, Judge Pickering was unanimously approved by the Committee in September of 1990 to be a United States District Court Judge for the Southern District of Mississippi. He was then unanimously confirmed by the full Senate. He has served honorably in this position for 11 years, and I am happy that the President has nominated Charles for a promotion to the Fifth Circuit.

Charles and I have known each other for approximately 40 years, which doesn't seem possible, and I can personally attest that there is no other person in the State of Mississippi who is more eminently qualified to serve on the Fifth Circuit Court of Appeals.

Charles Pickering graduated first in his class from the University of Mississippi Law School in 1961, and received his B.A. degree from Ole Miss with honors in 1959. He practiced law for almost 30 years in Jones County, Mississippi, serving stints as the prosecuting attorney for Jones County the City of Laurel during the 1960's. From 1972 to 1980, Charles served in the Mississippi State Senate. This was a part time position—with full-time demands I might add—that allowed him to continue his law practice during this period.

Judge Pickering has had an impeccable reputation on the bench in Mississippi, and he is respected by all sectors of the Mississippi and national legal community. A substantial majority of the members of the ABA's Standing Committee on the Federal Judiciary found him Well Qualified for appointment as a Fifth Circuit judge.

Furthermore, he is highly respected within the federal judiciary. He served on the Board of Directors of the Federal Judges Association from 1997 until this year, and was a member of the Executive Committee for the final two years of this term. He currently serves on the Judicial Branch Committee of the Judicial Conference of the United States, having been appointed by Chief Justice Rehnquist in 1997.

Judge Pickering has been involved in numerous community and public service endeavors. He serves on the Board of Directors of the Institute for Racial Reconciliation at the University of Mississippi, our mutual alma mater, and in the past has headed the March of Dimes campaign in Jones County, Mississippi, and served as Chairman of the Jones County Chapter of the American National Red Cross.

He has also volunteered for the Jones County Heart Fund, the Jones County Drug Education Council, and the Economic Development Authority of Jones County. He has always been very active in his church, serving as a Sunday School teacher, Chairman of the Deacons, Sunday School Superintendent, and Church Treasurer. From 1983-85, he was the President of the Mississippi Baptist Convention.

In addition to his many professional and civic activities, Charles Pickering has also been a good farmer. He was the first president of the National Catfish Farmers Association and was a leader in catfish farming during the early days.

Perhaps most importantly, thought, is the fact that Charles has always put his family first, even with the commitments I have just described. He has a wonderful wife and four grown children with spouses and families of their own. I want to particularly welcome his son, Congressman Chip Pickering, who is a former member of my staff.

Mr. Chairman, I am pleased that the Committee has moved forward with this hearing today, because the Senate needs to act quickly to confirm Judge Pickering. He is exceptionally well-qualified for elevation to the Fifth Circuit, and I strongly endorse his nomination.

Senator SCHUMER. Thank you, Senator Lott.

In New York, Judge, we are more familiar with cat food than catfish anyway, so that wasn't so bad from our point of view.

Also here to support the nomination of Judge Pickering to the Fifth Circuit is Senator Cochran.

**PRESENTATION OF CHARLES W. PICKERING, SR., NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI**

Senator COCHRAN. Mr. Chairman, thank you very much for the convening of the hearing and the consideration of this nomination.

In my view, Judge Pickering is one of the finest district judges we have had to serve in our State. He has demonstrated a sense of fairness and judicial demeanor that has reflected credit on the Federal judiciary. He has become known as somebody who tries to do what is right, but he is also guided by the predictable principles of law and procedure that he has enforced with a very even hand. I think he will serve with distinction on the court of appeals, as well, because of his keen intellect and his conscientious approach to his duties, as he has demonstrated as a United States District Judge.

Before he became a judge, he was an outstanding and respected lawyer in Mississippi. He handled some controversial cases in his home county of Jones County. He demonstrated that he had courage and a sense of community responsibility to help make decisions that were in the best interests of the entire community. These involved in some cases racial relations, labor union strikes against a corporation in his hometown. I remember both instances very well and came to appreciate his sense of public responsibility as a private attorney.

He served with distinction in the Mississippi State Senate. He was elected by the people of his district there, and reelected. He was Chairman of the Mississippi Republican Party, which duties he handled in a way that reflected credit on our fledgling Republican Party in Mississippi. It was not the majority party; it probably still isn't. Looking at the number of elected officials, it is a minority party.

He has shown himself capable of rising to the occasion in whatever capacity he has been given in either government, in his

church, in politics, and I think he will do the same in the Federal Judiciary on the Fifth Circuit Court of Appeals. So I recommend him wholeheartedly to the Committee for confirmation.

Senator SCHUMER. Thank you, Senator Cochran.

Before I turn to Senator Reid, we usually don't hear from House members, but we have a special House member. He is the son of Judge Pickering, Congressman Pickering, from Mississippi. Just as important as both of those qualities, he was a former staff member of Senator Lott.

Senator LOTT. So he has got good Senate roots.

Senator SCHUMER. Congressman?

**PRESENTATION OF CHARLES W. PICKERING, SR., NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, BY HON. CHARLES W. PICKERING, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI**

Representative PICKERING. First, thank you for the courtesy of allowing me to come and do a very unique and unusual experience, or have a unique and unusual experience for me, and that is to introduce my father. Usually, the father introduces the son to the world. This is a great opportunity for me to return all the great blessings and favors he has given to me in my lifetime. In most cases when we introduce someone, we have their bio and their experience. I have a lifetime of experience of watching my father.

I have three sisters, and on behalf of our family, the 4 children and now 18 grandchildren, we want to thank the Senate for leading the charge on the educational savings accounts so that grandparents can contribute to the education of their grandchildren.

My father has set an example from the courage, commitment, and of character. As Senator Cochran mentioned, I was born 38 years ago, in 1963, August 10. On that day, my father was elected as the prosecuting county attorney in Jones County, and that was one of the most difficult and turbulent times in the South and in our home State. I watched as he took principled, courageous stands in fighting the efforts of the Klan. He testified against the Imperial Wizard of the Ku Klux Klan, Sam Bowers.

In 1964, he also took another unusual and courageous step, and that is he left the Democratic Party to join the Republican Party.

Senator REID. You can carry things too far.

Senator SCHUMER. Yes. Are you trying to win votes for your father, or what? [Laughter.]

Representative PICKERING. I will say he was defeated in his next election.

Senator SCHUMER. And that is when he went to the cat food industry. [Laughter.]

Give the Congressman an extra few minutes, please.

Representative PICKERING. He did that because he believed it was in the best interests of the State to have a healthy two-party system that could participate not only in building a party in our State, but to give our State in national policy and national politics.

Throughout my life, as we went into integration through our public schools, he led the community to maintain support for the public school system. All four of his children went through that



public school system, so that it was a fully integrated educational experience, and I have been blessed as a result of that.

His efforts in racial relations, including today his leadership at the University of Mississippi and the Institute for Racial Reconciliation—so in his faith he has been active, in his community he has been active, and in his public life he has been committed. And it has given me, as his son, not only a good name, which is better than riches, gold and silver, but has carried me and our children and all the grandchildren of the family to a very fortunate place and position.

And so I just want to recommend to this Committee and endorse the nomination of my father, a good man, a good father, a good husband, a good grandfather, a good judge, a good lawyer, a good, committed public servant.

Thank you for your consideration.

Senator SCHUMER. Thank you, Congressman, and we all know what a proud day this is for you.

We will now move on to our next witness.

Just to explain to the audience, sometimes with the press of business some of the Senators who testify on behalf of their nominees have to leave, and we understand that you folks have to go, as well, and others.

We are now ready to hear from our colleague, Senator Reid, in support of the nomination of Larry Hicks to the District Court for the District of Nevada.

**PRESENTATION OF LARRY HICKS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. My nominee has a cat.

[Laughter.]

Chairman LEAHY. And if he doesn't, he will by the end of this hearing.

Senator REID. Mr. Chairman, thank you very much for holding this hearing. I say that because my nominee, that of Senator Ensign and me, Larry Hicks, traveled almost 3,000 miles to get here. What a disappointment it would have been for him and his family not to have this hearing.

When I talked to Chairman Leahy last night and inquired as to whether there would be a hearing, he said somewhere we are going to have the hearing; I don't know where, but we are going to have it. I immediately was very appreciative of the decision made by the two of you to have this hearing because, I repeat, what a disappointment it would have been for the Hicks family, who are seated behind me. This is a day—a hearing—for which Larry Hicks has waited for such a long, long time.

While Chairman Leahy is here, I would also like to commend him for his work on moving forward these nominations. There are many excuses that could have been put forward not to hold this hearing, and no one could have criticized you because there was every reason in the world not to hold this hearing.

Your decision to hold this hearing demonstrates your leadership. I know that you also held an emergency meeting earlier today to report out additional nominations. So I think we should all com-

mend and applaud you. I know I do, and I think the country should be very happy with what you have done.

In addition—I haven't had a chance to say this publicly, but I will say it—I appreciate the work that you have done on antiterrorism legislation. I have been supportive of this legislation that you have worked on with Senator Hatch. It hasn't been easy, but we produced a bill that I could proudly vote for, as I did. So thank you very much for holding this hearing and for the work that you have done generally.

I would ask permission for my full statement to be part of the record, Mr. Chairman.

Senator SCHUMER. Without objection.

Senator REID. I am pleased to appear today on behalf of Senator Ensign. As you can see, I am here in this row with a number of the minority, but all nominations that come from Nevada are supported by both of us. John Ensign does not have to do that, but he has done so. Any nominee that he has sent to the President had my approval before hand.

The first name he submitted to me was Larry Hicks, and that was easy. The Hicks family is wonderful, and well-respected. Larry Hicks is simply just one of the best. He is presently a partner in a very large, prestigious law firm in Nevada, the McDonald Carano firm, Where he is Chairman of the litigation section. He is a lawyer's lawyer. He has an extensive trial court record, and is a strong appellate court advocate.

Larry Hicks is also a settlement judge, and has been since 1998, by direction and order of the Nevada Supreme Court. He is admitted to practice in all the State and Federal courts of the State of Nevada, the Circuit Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

Larry served as an elected public official in Washoe County—Reno—Nevada. He was elected District Attorney of Washoe County, the chief law enforcement officer of the second largest county in the State of Nevada. He received his undergraduate degree proudly from the University of Nevada at Reno. He received his law degree from the University of Colorado School of Law, in Boulder.

He has received numerous awards and recognition from a variety of organizations, including the Nevada State Bar, where he served on the prestigious Board of Governors, and also as president. Larry has also been joined here today by his wife Marianne, his brother, Don Hicks, and Don's wife, Judy.

It is with great pleasure and truly an honor for me to recommend the next judge to the U.S. District Court for the District of Nevada, Larry Hicks.

[The prepared statement of Senator Reid follows:]

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, I would like to thank you, Chairman Leahy, and the entire Senate Judiciary Committee, for holding this hearing today, especially under such trying circumstances.

This Committee should be commended for its work on moving judicial nominations forward in a timely and reasonable manner.

Senator Leahy, your decision to hold this hearing today when all of the Senate Office buildings are closed—including the main hearing room for the Senate Judiciary Committee where this hearing would normally take place—demonstrates your

leadership and genuine desire to move as quickly as possible on all of President Bush's nominees, especially nominations to the Federal bench.

Futhermore, I, along with every Member of the Senate, knows how hard you have been working on comprehensive anti-terrorism legislation that will provide our nation's law enforcement with the necessary tools to fight the war against terror.

I know that after several weeks of hard work and intense negotiations, you have just reached a compromise with the Administration and your House counterparts on a comprehensive counter terrorism package.

I congratulate you for this critical contribution to our national security and the ongoing war against terrorism.

Yet, Mr. Chairman, despite your leadership and achievements on the anti-terrorism legislation, despite the fact that you have held judicial nominations hearings since September 11, and despite the fact that you have lost your offices and hearing room until next week yet still found a way to hold this hearing today, there are some in the Minority who have charged that you haven't done enough on judicial nominations, and have attempted to literally shut down the Senate until they get their way.

The Minority party has even endangered the war against terrorism by voting against cloture on the motion to proceed to the Foreign Operations Appropriations bill, legislation that includes not millions but billions of dollars to fight terrorism around the world.

Funding for our key allies in the Middle East, especially Israel and Egypt, both of whom will have to play a central role in the war against terrorism, is included in the Foreign operations Appropriations bill that Republicans are blocking.

Mr. Chairman, we have all heard how this Senate and this Committee is moving slower than the 1993 Senate during the first year of President Clinton's first term and the 1989 Senate during the first year of President George Bush's term.

And you know, Mr. Chairman, we have heard a lot of numbers to make that claim.

Well, I have some interesting numbers as well.

This year, under Senator Leahy's leadership, the Senate Judiciary Committee, which was not reorganized until June 29, 2001—51 legislative days ago—has held hearings on 14 judicial nominees and has confirmed 8—4 to the Circuit Courts of Appeals and 4 to the District Courts.

During the 71 legislative days that Republicans were in control of this Committee and the Senate, you know how many hearings were held on judicial nominations—ZERO.

You know how many judicial nominees were confirmed—that's right, ZERO.

Moreover, when compared to this same time in 1989 and in 1993—the Senate has confirmed twice as many judges.

In 1989 and in 1993, the Senate had confirmed only 4 judges by this time, as compared to the 8 that this Committee has confirmed under a shortened calendar and during such trying times for this nation.

In summary, Mr. Chairman, the record speaks for itself.

This Committee has worked extremely hard to move President Bush's judicial nominations, and this Committee is to be commended for its efforts.

I am pleased to appear before this Committee in support of one of those nominees—Mr. Larry Hicks of Reno, Nevada, to be the next judge on the United States District Court for the District of Nevada.

May I say on behalf of our colleague, Senator Ensign, who is unable to be here today, that Larry Hicks has the unequivocal support of both Senators from Nevada.

IN fact, Senator Ensign and I have discussed every candidate that he has recommended to President Bush, and I fully support his selections.

It has truly been a bipartisan approach with respect to the federal bench in Nevada.

Larry Hicks is currently a partner in the Reno law firm of McDonald, Carano, Wilson, McCune, Bergin, Grankovich & Hicks.

The Chairman of the litigation section, Larry has been with the firm since 1979. He has extensive trial court, appellate court and settlement experience, having served as a settlement judge since 1998 for the Nevada Supreme Court.

Larry is also admitted to practice in all state and federal courts of the State of Nevada, the Circuit Court of Appeals for the Ninth Circuit and the United States Supreme Court.

Prior to his private practice, Larry served the people of Northern Nevada for 11 years in the Office of the Washoe County District Attorney.

In 1975, he was elected District Attorney of Washoe County.

Larry received his undergraduate degree from the University of Nevada in Reno and received his law degree from the University of Colorado School of Law in Boulder.

He has also received numerous awards and recognition from variety of organizations, including the Nevada State Bar, where he has served on the Board of Governors—and as President—the American Bar Association, the Association of Trial Lawyers of America and the International Association of Gaming Attorneys.

Larry has also been blessed with a beautiful family and is joined here today by his wife Marianne, his brother Don Hicks and Don's wife, Judy.

He and Marianne are the proud parents of three children, Carrie, Amy and Christopher, all of whom are graduates of the University of Nevada in Reno.

He is a fine man, a fine Nevadan, and I am sure that he will be a fine judge.

Larry Hicks enjoys my full support, and I would urge the Senate to confirm his nomination to the District of Nevada as quickly as possible.

Thank you Mr. Chairman.

Senator SCHUMER. Thank you very much, Senator Reid, and we very much appreciate your testimony and your making the time to come.

Chairman LEAHY. I thank you for those very kind words.

Senator SCHUMER. Our next witness is Senator Nickles, who is here to testify on behalf of the nomination of Stephen Friot to the Western District of Oklahoma.

**PRESENTATION OF STEPHEN FRIOT, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA, BY HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator NICKLES. Thank you, Mr. Chairman, and Chairman Leahy, Senator Kennedy and Senator DeWine. Thank you very much for holding this hearing, especially under these rather unusual circumstances. Also, thank you for reporting out a few nominees earlier today.

On behalf of Senator Inhofe and myself, we are delighted to introduce to the Committee Mr. Friot. We are very excited about his nomination. We think he will be an outstanding District Judge for the Western District of the State of Oklahoma.

His son, Andrew, is here. He is an ROTC cadet, right behind us back here.

Senator SCHUMER. From Syracuse University.

Senator NICKLES. He happens to be at Syracuse, that is right. He is an outstanding young man, and his father, as you will get to know, is an outstanding attorney and he will be an outstanding district court judge.

He is an attorney in the law firm of Spradling, Alpern, Friot and Gum; he has been their for the last 29 years, serving as a partner for 26. His practice has included corporate defense and aviation litigation. Fifty-eight percent of his court appearances for trial were in Federal court.

He has also served as a judge on the temporary court of appeals for the State of Oklahoma, as a judge pro tem for the Oklahoma Court on the Judiciary, and has as an adjunct professor at the University of Oklahoma. In addition to that, he has been president of the county bar association, and I have every confidence that he will be an outstanding member of the court, representing, I think, this country extremely well. He is admitted to practice before the Supreme Court and the U.S. Courts of Appeals for the Fifth, Eighth and Tenth Circuits.

Mr. Chairman, it is a great pleasure and privilege for me, and Senator Inhofe as well, to introduce to the Committee Mr. Friot, who will do an outstanding job as a U.S. District Court Judge for the Western District of Oklahoma.

Senator SCHUMER. Thank you, Senator Nickles, very much. We appreciate it.

Our next nominee is M. Christina Armijo, for the District of New Mexico, and here to testify on behalf of Ms. Armijo are both Senator Domenici and Senator Bingaman.

Senator Domenici?

**PRESENTATION OF M. CHRISTINA ARMIJO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO, BY HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO**

Senator DOMENICI. Mr. Chairman, thank you so much for holding the hearing and for placing the name of Ms. Armijo before you for confirmation.

I am very pleased that Senator Bingaman has been supporting our nominee from the very beginning, and that he has indeed spoken to the Chairman of his personal considerations. I thank him personally and publicly for that.

Out in the West and in parts of the country where the first settlers were Hispanic, and not as they were on the East Coast, you have before you a nominee who is a 12th-generation Hispanic American from northern New Mexico. She also, incidentally, comes from a lineage that loves the law, in that her grandfather served as a judge for the longest period of time of any judge in the history of New Mexico, actually for 35 years. It was broken by a 6-year piece when he was not a judge, but he served for 35 years as a judge. No one comes close to that in New Mexico.

That means that if any of us believe in the laws of passing talents down to some extent, we ought to conclude that we have a very talented nominee who has the qualities of judgeship.

There is no doubt in my mind that when you confirm her and send to New Mexico a Hispanic woman to sit on the bench at the U.S. District Court, that will do all of us justice. I personally want to thank you for that. I think New Mexicans will feel very proud that at the highest level of judgeship they have one of their own, one of the original Hispanics that came to our State.

I am sure my friend, Senator Bingaman, will talk a little bit about her record. I would just say she serves in an appellate position within the New Mexico system, and she was elected to that. She was appointed prior to that, and frankly has a very excellent reputation in terms of academics. Her degree is a good, solid one.

Everybody knows her to be very, very fair. And while the word "compassionate" is being bandied around a great deal, I don't think there is any question that her record, both of service as a lawyer for 22 years and being on the bench for a number of years—fairness and firmness are just part of this woman's life. She will do a special job in that regard, and I am hopeful that her nomination which came forth from our President some time ago will end soon and we can confirm her in the Senate and send her to New Mexico, where the dockets are so full because of the border problems.

Mr. Chairman, it has reached the point where the judges who are sitting there are writing to us and calling us, asking that we hurry because they are almost unable to handle the docket. Thank you for helping with that. That is helping with justice.

I appreciate being before you, and thank you, Senator Kennedy, Mr. Chairman, and Senator DeWine.

Senator SCHUMER. Thank you, Senator Domenici.  
Senator Bingaman?

**PRESENTATION OF M. CHRISTINA ARMIJO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO, BY HON. JEFF BINGAMAN, A U.S. SENATOR FROM THE STATE OF NEW MEXICO**

Senator BINGAMAN. Thank you, Mr. Chairman. Thanks again for having the hearing, and thanks to all of you for taking the time to do this.

I join Senator Domenici in supporting Christina Armijo, our court of appeals judge in New Mexico now. She was appointed to our court of appeals and then she was elected to that position. She is extremely well-respected in our State.

She went through the University of New Mexico and the University of New Mexico School of Law. In fact, I think she was a student of my wife's when she was at the University of New Mexico School of Law. She has a very respected record of public service, in addition to her time in private practice and her professional career.

I am persuaded, as Senator Domenici stated and as he indicated, that she has the character and the temperament and the reputation that we need for a position of this importance. So I recommend her, just as Senator Domenici did, and I hope we can move quickly to confirm her here in the Senate.

Senator SCHUMER. Thank you, Senator Bingaman, and the fact that you are both here is a real tribute to Judge Armijo.

Last but not least, we have the nomination pending of Karon Bowdre for the Northern District of Alabama, and here to speak in support of that nomination is Senator Richard Shelby of Alabama.

**PRESENTATION OF KARON BOWDRE, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA, BY HON. RICHARD SHELBY, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SHELBY. Thank you, Senator Schumer, Senator DeWine, Senator Kennedy. First of all, I don't mind being last in a situation like this. As a matter of fact, I appreciate the Judiciary Committee coming to the Appropriations Committee and holding today's hearing. As a matter of fact, I am sitting in my normal seat in the Appropriations Committee, but not at the proper place for the Judiciary Committee.

Having said that, I want to thank Senator Leahy, I know he just left, but I want to thank him for holding this hearing, and I don't mind at all coming to your Committee in a situation like this with Senator Lott, Senator Nickles, Senator Reid, Senator Domenici, Senator Bingaman, all senior to me.

Senator SCHUMER. Yes. I hope I got it in the right order here.

Senator SHELBY. Absolutely, you got it right.

It is a distinct honor and privilege for me to introduce and to recommend Karon Owen Bowdre to be a Federal District Judge for the Northern District of Alabama. I have known Karon Bowdre since she was an undergraduate student. She had a distinguished record as an undergraduate and in law school.

She clerked for a Federal district judge upon graduation from law school. She then entered and became a partner in a prestigious law firm in Birmingham, where she as a young woman became very accomplished as a litigator. Subsequent to that, she went and became a law professor and she has distinguished herself again with her many publications, and also in the classroom.

It is without any reservation, Senator Schumer, that I recommend, and Senator Sessions, who is not here, joins me in recommending Karon Owen Bowdre to be Federal District Judge for the Judicial vacancy we have in Birmingham. I am hoping that your Committee will act upon her favorably and report her to the full Senate and we can confirm her in the fall because we have a lot of cases that need to be heard in Birmingham, in the Northern District of Alabama.

Senator SCHUMER. Well, thank you, Senator Shelby.

Senator SHELBY. She is here with her husband and others.

Senator SCHUMER. Well, thank you, Senator Shelby.

Senator SHELBY. Thank you.

Senator SCHUMER. Thank you for your patience and your statement. We appreciate it.

Now, I would like to call our five nominees forward. Would they please come forward? I think they will have little name plates for you. Please remain standing because I will just administer the oath.

Would the nominees please come forward? Please raise your right hand and repeat after me.

[Witnesses sworn.]

Senator SCHUMER. Thank you. Please be seated.

Now, I am going to call on each of our nominees to make a brief statement, and they may also, if they choose, introduce their family members who are here with them. So we will start with Judge Pickering.

#### **STATEMENT OF CHARLES W. PICKERING, SR., NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT**

Judge PICKERING. Mr. Chairman, I would certainly like to thank you and Chairman Leahy and the other members of the Committee and staff for scheduling this hearing today, and especially after things happened yesterday and the buildings were closed, not only to show that you all are about doing the people's business, but the inconvenience and the courtesy extended to the five of us to allow us to go ahead and have the hearing while we were here today.

I would be remiss if I didn't thank Senators Cochran and Lott for their friendship over the years and for the kind words that they shared here today.

What does a father say about a son? And I am delighted to have with me today not only my son, Charles Pickering, Jr., Chip Pickering, but his wife, Leisha, and my wife, Margaret Ann. About 42

years ago, I married my high school sweetheart, who was the principal's daughter, and the best day of my life was when I married my high school principal's daughter.

In addition to my wife and daughter-in-law, we have 5 of our 18 grandchildren—Will, Ross, Jack, Asher and Harper. And I would be remiss, after having mentioned these grandchildren, not to mention our regret that due to school and distance that my three daughters and their families are not able to be here: my oldest daughter, Mrs. Rick Dunkerton, their children, Aubrey, Jeremy, Elise, Sara, Hannah and Emily and Jeremy—or excuse me—Thomas. I knew that somewhere down the line I was bound to twist my tongue, as they were fooling around with catfish and cat food.

Incidentally, Mr. Chairman, you were right. Catfish farming did come when I was out of politics and the catfish farmers needed free legal services, so that is how I wound up being president of the Catfish Farmers of America.

The other two children are our middle daughter, Mrs. Jerry Montgomery, their children John, Mary Ivon, Robert and Margaret Anne. And our youngest daughter, if she were here, Mrs. Clint Chapman, from Alabama, would have brought their two children, Allie and Emma, and she would have also brought our as yet unborn 19th grandchild.

So, Mr. Chairman, thank you very much for the hearing and the courtesies that you have extended thus far.

[The biographical information of Judge Pickering follows.]



I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Charles Willis Pickering, Sr.
2. Address: List current place of residence and office address(es).  
  
Home: 117 Dixon Drive, Taylorsville, MS 39168  
Office: 701 North Main Street, Suite 228, Hattiesburg, MS 39401
3. Date and place of birth.  
  
May 29, 1937, Jones County, Mississippi
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married to the former Margaret Ann Thomas, who is a housewife and has been a housewife since 1961.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
a. University of Mississippi, Oxford, MS. 1957-1961.  
Received L.L.B. (1961, changed to J.D. in 1968) and B.A. (1959).  
  
b. Jones County Junior College, Ellisville, MS. 1955-1957.  
Received A.A. Degree.
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
a. 1959-1961. While a student at the University of Mississippi, I distributed newspapers for the Clarion Ledger and Jackson Daily News in Oxford, Mississippi, and on the University of Mississippi campus.

- b. 1960, June-August. Worked as a doorkeeper's aid, U.S. House of Representatives, Washington, DC.
- c. 1960-1961. Worked as student-assistant to the director of men's housing at the University of Mississippi.
- d. 1961. I practiced law as a solo practitioner from June 1961 until September 1961 at 529 Central Avenue, Laurel, MS 39440.
- e. From September 1961 until January 1971 I was a partner in the law firm of Gartin, Hester and Pickering, 529 Central Avenue, Laurel, MS 39440.
- f. 1962 - I served as prosecuting attorney for the City of Laurel in Municipal Court. This was an appointed position.
- g. 1962 to present. Owner of a farm (Jones County, Mississippi.)
- h. 1964 to 1968 - I served as prosecuting attorney of Jones County, Mississippi. This was an elected position.
- i. From approximately 1965 until 1988, I was a member of the Board of Directors and served as president of Pickering Bros. Farms, Route 2, Taylorsville, MS 39168.
- j. During 1971 and 1972 I practiced law under the firm name of "Law Offices of Charles W. Pickering," 529 Central Avenue, Laurel, MS 39440.
- k. 1972 until 1980 - I served in the Mississippi State Senate. This was an elected position.
- l. From 1973 to January, 1980 I practiced law in the firm of Pickering & McKenzie, 529 Central Avenue, Laurel, MS 39440.
- m. In 1980 I again practiced law under the firm name of "Law Offices of Charles W. Pickering," 529 Central Avenue, Laurel, MS.
- n. 1980 until 1996 - I was a member and Chairman of the Board of Directors of Robine and Welch Machine and Tool Company, Inc., P. O. Box 252, Laurel, MS 39441.

o. From 1981 until approximately 1986 I practiced law in the firm of Pickering & Williamson, 529 Central Avenue, P. O. Box 713, Laurel, MS 39441.

p. 1983 to 1987 - I was a member and chairman of the Board of Directors of Computer Partner and Software, Inc., P. O. Box 483, Laurel, MS 39441.

q. 1983-1990. Chairman (1983-1985), Member of Board of Directors (1983-1990), Jones County Economic Development Authority.

r. From approximately 1986 until 1990, when I was appointed to the bench, I practiced law in the firm of Pickering, Williamson & Walters, 529 Central Avenue, P.O. Box 713, Laurel, MS 39441.

s. 1990-present. U.S. District Judge, Southern District of Mississippi.

t. 1999-present. On the Board of Directors of the Institute for Racial Reconciliation at the University of Mississippi.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I was not in the military.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

a. Rated "AV," the highest rating given by Martindale Hubbell, a publication that rates attorneys, at time of appointment to bench.

b. Graduated first in law school class, 1961

c. B.A. Degree from University of Mississippi with honors, 1959, with major in history

d. Graduated first in class, Jones County Junior College, 1957

e. Selected to Law Journal staff, University of Mississippi School of Law, based on academic achievement

f. Selected to serve as chairman of the Moot Court Board at University of Mississippi School of Law based on academic achievement

g. Received recognition as outstanding graduate in field of real property, University of Mississippi School of Law, 1961

h. In final Moot Court competition, University of Mississippi School of Law, 1961

i. Honorary doctorate from William Carey College in Hattiesburg, Mississippi, in 1984

j. My wife and I were honored as Outstanding Alumni of Jones County Junior College, Ellisville, Mississippi, in 2000

k. Member of Phi Delta Phi Honorary Legal Fraternity, University of Mississippi

l. President of ODK National Men's Leadership Fraternity, University of Mississippi

m. President Tau Kappa Alpha, Honorary Speech Fraternity, University of Mississippi

n. Member of honorary fraternities in areas of scholastics, history and political science at University of Mississippi

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

I serve on the Judicial Branch Committee of the Judicial Conference of the United States, appointed by Chief Justice Rehnquist in 1997.

Federal Judges Association. I served on the Board of Directors from 1997-2001 and was a member of the Executive Committee, 1999-2001.

American Bar Association, from early 1960s to present

Mississippi Bar Association, from 1961 to present

Jones County Bar Association. I served as vice president and president-elect in 1978-1979, but resigned as president-elect because I was a candidate for Attorney General of Mississippi.

Mississippi Trial Lawyers Association

Association of Trial Lawyers of America

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Federal Judges Association, Board of Directors of the Institute for Racial Reconciliation at the University of Mississippi; Jones County Farm Bureau; Mississippi Farm Bureau; Jones County Junior College Alumni Association; University of Mississippi Alumni Association; State 4-H Advisory Council; and Sigma Chi Fraternity, alumni; and an inactive Mason and Shriner. Although not a formal organization, I helped convene a group that is presently developing a plan to address the needs of "kids at risk" in Laurel, Mississippi.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.
- a. All trial courts within the State of Mississippi, June 1961, until appointed to the federal bench in 1990.
  - b. Supreme Court of Mississippi, June 1961, until appointed to the federal bench in 1990.
  - c. United States District Court for the Southern District of Mississippi, July 11, 1961, until appointed to the federal bench in 1990.
  - d. U.S. Court of Appeals for the Fifth Circuit, July 14, 1980, until appointed to the federal bench in 1990.
  - e. United States District Court for the Northern District of Mississippi, January 18, 1990, until appointed to the federal bench in 1990.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.
  - a. In November 1999 I wrote an article on the need to promote racial harmony. This article was published in the Sunday, December 26, 1999, edition of the Clarion Ledger, a newspaper published in Jackson, Mississippi. A copy of this article is attached.
  - b. Speech on Jury Nullification to Federal Bar Association, Jackson, Mississippi, March 21, 2000. A copy of the draft for this speech is attached.
  - c. "Torts - Right of Privacy," Mississippi Law Journal, March 1960, review of a recent case while on Law Journal staff at University of Mississippi. A copy is attached.
  - d. "Criminal Law - Miscegenation - Incest," Mississippi Law Journal, May 1959, while on Law Journal staff at University of Mississippi. A copy is attached.
  - e. In 1984 and 1985 I delivered addresses as the President of the Mississippi Baptist Convention. These addresses were printed in The Baptist Record, the state Baptist newspaper. These speeches were related to the Southern Baptist Convention and its Biblical doctrines. Copies of these two addresses are attached.
13. Health: What is the present state of your health? List the date of your last physical examination.
 

Good. March 28, 2001.
14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.
  - a. I served as municipal judge for the City of Laurel for a brief period from July 1969 to September 1969. This was an appointed position. The Municipal Court of the City of Laurel, Mississippi, handles criminal misdemeanors. In

September 1969 I was required to travel extensively. As a result I resigned the city judge's position.

b. I have served as United States District Judge for the Southern District of Mississippi since October 2, 1990. This Court has federal question and diversity jurisdiction within the Southern District of Mississippi.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

(a) Suggs v. PanAmerican Life Insurance Co., 847 F. Supp. 1324 (S.D. Miss. 1994).

(b) Coats v. Penrod, 785 F. Supp. 614 (S.D. Miss. 1992).

(c) Sunbeam Products Inc. v. Westbend Co., 1996 Westlaw 511639, 39 U.S.P.Q. 2d 1545 (S.D. Miss. 1996).

(d) Bryant v. Lawrence County, 814 F. Supp. 1346 (S.D. Miss. 1993) and Bryant v. Lawrence County, 876 F. Supp. 122 (S.D. Miss. 1995).

(e) Hammond v. Coleman Company, 61 F. Supp.2d 533 (S.D. Miss. 1999).

(f) Lee v. General Motors, 950 F. Supp. 170, 34 UCC Rep. Serv. 2d 315 (S.D. Miss. 1996).

(g) Windham v. Wyeth Laboratories, 786 F. Supp. 607 Prod. Liab. Rep. (CCH)B 13,273 (S.D. Miss. 1992).

(h) Bingham v. Anderson, 21 F. Supp. 2d 639 (S.D. Miss. 1998).

(i) U.S. v. Wainuskis, 942 F. Supp. 1101 (S.D. Miss. 1996).

(j) Thornhill v. Breazeale, 88 F. Supp. 2d 647 (S.D. Miss. 2000).

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings:

## PUBLISHED OPINIONS

(a) Addo v. Globe Life and Accident Ins. Co., 230 F.3d 759 (5th Cir. 2000) Vacated and remanded.

This case was removed from state to federal court. Plaintiff filed a motion to remand. This court denied the motion to remand and granted summary judgment for the defendant. The case involved a \$5,000 policy of insurance. Plaintiff, in her state court complaint prayed for recovery of less than \$75,000. A few days after suit was filed, plaintiff responded to a \$5,000 offer of settlement from defendant and demanded \$250,000. In a case of first impression, a divided Fifth Circuit panel concluded that the demand letter was an "other paper" under 28 U.S.C. § 1446(b), for purposes of "opening § 1446(b)'s 30-day removal window." Since defendant removed more than thirty days after this letter was received the majority concluded that the removal was not timely, that this Court lacked jurisdiction, and vacated and remanded the grant of summary judgment with instructions that the case be remanded to state court.

(b) Phillips v. Donnelly, 216 F.3d 508 (5th Cir. 2000). Vacated and remanded.

This was a habeas corpus case in which the petitioner pled guilty to vehicular manslaughter in state court. The Magistrate Judge filed a report and recommendation which recommended dismissal of the case based on untimeliness in filing the petition. Based on information provided by the petitioner in his Objections to the Magistrate's Report and Recommendation, I remanded the matter to the Magistrate Judge for further consideration. The Magistrate Judge reviewed the matter further and provided another Report and Recommendation, again recommending dismissal of the matter based on the untimeliness of the petition. The petitioner claimed that he did not receive notice of the denial of his state court appeal until some four months after it was actually entered. He argued that the district court should toll the statute of limitations for the time period between the actual denial by the state court and the time when he allegedly received notice. Ultimately, I adopted the Magistrate's Report and Recommendation which concluded that the delay in notification did not toll the statute of limitations.

On appeal, the Fifth Circuit, recognizing that equitable tolling should only apply in exceptional



circumstances, found that it could be applicable in this case. This was the first time the Fifth Circuit had ruled that an alleged failure to receive a copy of a state court decision could be the basis for equitable tolling. The Fifth Circuit vacated the order of dismissal and remanded for a hearing as to when the petitioner actually received notice of the denial of his state court appeal. This matter was referred back to the Magistrate Judge for hearing.

(c) Martin v. Memorial Hospital at Gulfport, 86 F.3d 1391 (5th Cir. 1996). Affirmed in part, reversed in part and remanded.

The Memorial Hospital at Gulfport entered into an exclusive contract with a physician to operate the hospital's facility for end stage renal disease. Martin, another physician, claiming this contract eliminated competition and prevented him from practicing medicine, brought an antitrust action against Memorial Hospital and its Board. This Court granted in part defendant's motion for summary judgment based on local governmental immunity as to money damages and denied summary judgment as to the plaintiff's claim for injunctive relief, attorney's fees, and court costs. This Court dismissed all other claims against the individual board members.

The Fifth Circuit granted interlocutory appeal on the single issue of whether the hospital, owned and operated by a municipality, and the hospital's board of trustees are immune from an antitrust claim under the state action doctrine of Parker v. Brown, 317 U.S. 341 (1943). The Fifth Circuit found that under Mississippi law the hospital and its board members were authorized to enter into anti-competitive agreements and were entitled to state action immunity. The case was remanded for entry of summary judgment on all antitrust claims.

After the matter was remanded to this Court, the hospital filed new motions for summary judgment which were granted in their entirety. This case was then appealed by the physician. It was affirmed by the Fifth Circuit. 130 F.3d 1143 (5th Cir. 1997).

(d) Land v. United States Fidelity and Guaranty Co., 78 F.3d 187 (5th Cir. 1996). Reversed and remanded.

This was a diversity case involving "stacking" of uninsured motorist coverage. This Court concluded that stacking was allowed under Mississippi law and granted summary judgment. The Fifth Circuit stated "we trespass on the ever-shifting

sands of Mississippi's uninsured motorist law" and noted that it had a more recent case from the Mississippi Supreme Court "unavailable to the district court." The Fifth Circuit then reversed and remanded. Before the issue could be tried before this court, the Mississippi Supreme Court handed down yet another decision basically consistent with this Court's initial ruling. U.S. Fidelity and Guar. Co. v. Ferguson, 698 So.2d 77 (Miss. 1997). The parties settled for approximately 90 to 95 percent of the amount in controversy based on the subsequent decision of the Mississippi Supreme Court.

(e) Applewhite v. Reichhold Chemicals, Inc., 67 F.3d 571 (5th Cir. 1995). Affirmed in part, vacated in part.

This case involved a 1977 explosion and fire at defendant's plant in Columbia, Mississippi (incorrectly referred to as Columbus). On March 3, 1992, when this case was being handled by a different judge an order was entered "requiring all subsequent suits against Reichhold Chemicals regarding the Columbus site to be filed separately." This Court denied the plaintiffs' motion for a class certification under Rule 23(b)(3) and also dismissed the plaintiffs' complaint without prejudice based on the March 3, 1992, order. The Fifth Circuit affirmed the denial of class certification but concluded that the Court should have examined each case individually rather than relying on the March 3, 1992, order and remanded to the district court to consider whether plaintiffs were properly joined and whether they should be allowed to continue in one action.

(f) Satcher v. Honda Motor Co., 52 F.3d 1311 (5th Cir. 1995). Affirmed in part, vacated in part.

Plaintiff motorcycle rider had a leg amputated in an accident with a motor vehicle. He brought a products liability suit under the crash worthiness doctrine. This Court denied defendant's motion for summary judgment and the case proceeded to trial. The jury awarded compensatory and punitive damages. The issue of punitive damages was submitted to the jury based on testimony that defendant had known of the alleged dangerous design for twenty years and had joined with other manufacturers in deliberately blocking the adoption of safety standards within the industry which would have precluded this design and prevented the injury.

The defendant appealed and the Fifth Circuit initially reversed and rendered, but on rehearing, based on an intervening state court decision, vacated its original

opinion and remanded the case to this Court for further consideration. Upon reconsideration, this Court reaffirmed the jury verdict whereupon the defendant again appealed. The Fifth Circuit affirmed this Court's evidentiary and trial rulings and the jury verdict on compensatory damages but found that Honda's conduct did not rise to the level required for the imposition of punitive damages and vacated the punitive damages award.

(g) L & A Contracting Company v. Southern Concrete Services, Inc., et al, 17 F.3d 106 (5th Cir. 1994). Affirmed in part, vacated in part.

In this case, L & A Construction Company was a general contractor on a project to build a bridge in Apalachicola, Florida. L & A subcontracted with Southern Concrete Services to provide concrete for the project. Throughout the course of the project, the evidence established that Southern Concrete failed to provide a sufficient quantity of concrete of sufficient quality in a timely manner for the completion of the project. L & A put the subcontractor, Southern Concrete, on notice that it considered this to be a breach of contract and copied the subcontractor's bonding agent, Fidelity and Deposit Company of Maryland.

After completion of the project, L & A sued Southern and F & D for breach of contract in Mississippi state court. The case was removed to federal court. This Court conducted a six-day bench trial. At the conclusion of the trial, applying Florida law, this Court found that both Southern and F & D had breached the subcontract and awarded L & A damages against both Southern and F & D.

On appeal the Fifth Circuit, making a legal distinction between "breach" and "default", affirmed this Court's award of damages to L & A against the subcontractor Southern but vacated the judgment against the surety F & D.

(h) Although Exxon Corp. v Crosby Mississippi Resources, Ltd, 40 F.3d 1474 (5th Cir. 1995), is listed in the indexes as affirmed in part and reversed in part, the opinion of this Court was affirmed.

This appeal involved two different cases from the Southern District of Mississippi consolidated on appeal. One case, found at 775 F. Supp. 969, was rendered by a different judge. The second case, found at 815 F. Supp. 977, was decided by me. My decision was affirmed while the decision of the other judge was affirmed in part and reversed in part. 40 F.3d 1491.

(i) The following case was appealed from this Court to the Fifth Circuit. The Fifth Circuit affirmed and the decision of the Fifth Circuit was appealed to the Supreme Court. The Supreme Court reversed the Fifth Circuit. Garlotte v. Fordice, 29 F.3d 216 (5th Cir. 1994), certiorari was granted, Garlotte v. Fordice, 513 U.S. 1123, 115 S. Ct. 929, 130 L.Ed.2d 876 (1995). Judgment of Fifth Circuit was reversed by Garlotte v. Fordice, 515 U.S. 39, 115 S. Ct. 1948 (1995). On remand in Garlotte v. Fordice, 72 F.3d 34 (5th Cir. 1995), the Fifth Circuit again affirmed this Court's dismissal of Garlotte's habeas corpus petition, this time on the merits.

The factual background was as follows: Garlotte was sentenced to three years for possession of marijuana. He received two concurrent life sentences for murder to run consecutive to his three year marijuana sentence. The petition for habeas involved only the marijuana conviction. This Court denied the petition for habeas on the merits and declined to grant a Certificate of Probable Cause. The Fifth Circuit granted a Certificate of Probable Cause and ordered the respondent to brief the issue of whether or not the district court prematurely dismissed Garlotte's petition without a hearing. The Fifth Circuit then affirmed this Court finding that since Garlotte had already served his three year sentence for the marijuana charge he was no longer in custody on that charge. The Supreme Court, in a 7-2 decision, reversed the Fifth Circuit concluding that Garlotte was "in custody" for the purpose of his habeas petition even though he had already served his marijuana sentence. The Supreme Court found that he would have started serving his life sentence sooner if his marijuana conviction had been set aside. On remand, the Fifth Circuit reviewed all 15 points of error alleged by Garlotte, on the merits, and affirmed this Court's original dismissal of his habeas corpus petition.

(j) U. S. v. Nguyen, 28 F.3d 477 (5th Cir. 1994).  
Reversed and remanded.

Defendant was convicted of one count of using fire to commit a felony and one count of attempting to destroy a building by fire in violation of two different subsections of 18 U.S.C. §844. Defendant appealed. The Government cross-appealed. The Fifth Circuit affirmed on the question of whether the evidence was sufficient; affirmed this Court's refusal to dismiss count three as being multiplicitous, though defendant was ultimately acquitted on this count; and

affirmed this Court's denial of defendant's motion for a mistrial when defense counsel on cross examination elicited information relative to another arson. The Fifth Circuit agreed with this Court that this information was elicited in response to a direct question by defense counsel and further that the cautionary instruction given by this Court was adequate to cure any prejudice. The Fifth Circuit also affirmed this Court's giving of a modified Allen charge. This Court sentenced defendant to five years as to the mandatory count, but did not sentence defendant as to the second count, which this Court concluded involved the same conduct as the first count. The Fifth Circuit reversed and remanded for this Court to impose a consecutive sentence as to the second count.

(k) Watkins v. Fordice, 7 F.3d 453 (5th Cir. 1993).  
Reversed and remanded.

This was a voting rights case in which this Judge was one of a three judge panel composed of Circuit Judge Rhesa H. Barksdale, District Judge Tom S. Lee, and this writer. This case was originally filed in 1991 after Mississippi had redistricted both houses of its legislature based on 1990 census data. The Attorney General had objected to the 1991 redistricting plan. The appellants had asked the three judge district court to enjoin the upcoming elections. This request was denied. Watkins v. Mabus, 771 F.Supp. 789 (D.C. Miss. 1991). The denial was affirmed by the United States Supreme Court. (Affirmed in part, vacated in part. Watkins v. Mabus, 502 U.S. 954, 72 S.Ct. 412, 116 L.Ed. 2d 433 (1991).) In its 1992 regular session, the Mississippi Legislature passed a revised redistricting plan which was precleared by the United States Attorney General. The 1992 redistricting plan mooted all of appellants' claims. The Court had ordered the parties to file necessary motions for the final disposition of the case. In response, the appellants requested dissolution of the three judge court, remand of the case to a single judge district court, and award of attorney fees. The Court awarded \$198,688.23 in attorney fees and expenses instead of the \$866,938.39 requested. The appellants filed a timely appeal and the state cross appealed. The Fifth Circuit affirmed on all issues except on the hourly rate employed by the district court. Plaintiffs filed affidavits from attorneys in the community showing the prevailing market rate in the locality to be \$150 to \$200 per hour for attorneys with more than ten years experience and \$100 to \$150 per hour for those with four to ten years experience. The State introduced

attorneys' affidavits showing the market range to be \$75 to \$125 per hour. The three judge panel set what it found to be a reasonable hourly rate, of \$95-110 per hour, within the market range, but according to the Fifth Circuit this deviated from the customary billing rates of the appellants' attorneys. The Fifth Circuit vacated the award of attorney fees and remanded to the Court to either award each attorney's customary billing rate or state concise reasons for its decision to do otherwise. On remand the Court reviewed the fee request and reaffirmed its prior order. 852 F.Supp. 542 (S.D. Miss. 1994). The Fifth Circuit affirmed. 49 F.3d 728 (5th Cir. 1995).

(1) United States v. Murray, 988 F.2d 518 (5th Cir. 1993). Affirmed in part, reversed in part, and remanded.

Defendant was convicted by a jury of possession of a firearm by a previously convicted felon, aiding and abetting the transfer of an unregistered firearm, possession of an unregistered firearm and aiding and abetting in the sale of a firearm to a convicted felon. After conviction, the defendant appealed all four counts of his conviction. Considering conviction as to each count in turn, the Fifth Circuit made a determination that there was sufficient evidence to support the convictions for possession of a firearm by a previously convicted felon, aiding and abetting in the transfer of an unregistered firearm and possession of an unregistered firearm. The Fifth Circuit found, however, that the evidence was insufficient to convict the defendant of aiding and abetting in the sale of a firearm to a convicted felon. The Fifth Circuit affirmed the judgment of this Court as to three convictions and reversed this Court as to the fourth conviction, and remanded for resentencing.

(m) U.S. v. Christine Wainuskis, 138 F.3d 183 (5th Cir. (Miss.) 1998).

This case is listed on the Fifth Circuit's index as vacated. It was in fact an affirmance of this Court's denial of the defendant's 28 U.S.C. § 2255 motion to set aside her judgment of conviction.

#### UNPUBLISHED OPINIONS

(a) U.S.A. v. Kirksey Nix and John Ransom, 1:91-CR-40, 99-60069 (5th Cir. Feb. 12, 2001). Reversed and remanded.

The defendants were convicted of several counts of conspiracy involving the murder for hire of a state court judge in 1991. The defendants filed a motion for new trial in 1995 allegedly based on newly discovered evidence. At the request of the defendants, because of an intervening trial regarding new charges in relation to the murder for hire, the Court did not rule on this motion for new trial until 1997. The Court dismissed the defendants' motion. The defendants untimely filed a notice of appeal. The Fifth Circuit remanded the matter to this Court for a determination of whether or not the defendants' filings were late due to good cause or excusable neglect. In a detailed opinion this Court ruled that the defendants did not show excusable neglect nor good cause for the late filing based on Rule 17(c) of this Court's local rules which notifies all pro se litigants of their "continuing obligation to apprise the court of any address change." This Court found that the defendants had not timely notified the district court clerk's office as to their change in addresses and that such had caused the delay in filing timely notices of appeal. The Circuit Court stated that the defendants had advised the Fifth Circuit that they had orally notified the district court clerk's office of their new addresses. This argument was not made before this Court, but rather defendants argued that they had made other filings with this Court and from those filings the Clerk should have been able to ascertain their new addresses. In light of defendants' argument that they had orally notified the Clerk of their change of addresses, the Circuit Court vacated the District Court's findings by holding that the word "apprise" in the district court's local rules could include an oral as well as written notification. The Circuit Court vacated and remanded to this Court for a factual determination as to whether defendants gave reasonable notice-though not necessarily written-of their new addresses. The Appellate Court, as did this Court, noted that "Nix and Ransom are habitual litigants who have systematically burdened the federal court system with literally thousands of pages of frivolous material." The matter has been referred to the magistrate judge assigned to the case for factual findings.

(b) Fairley v. The Prudential Ins. Co., 91-CV-74, 94-60050 (5th Cir. Nov. 8, 1994). Reversed and rendered.

This case involved the interpretation of insurance coverage under an accidental dismemberment policy. Fairley injured his right eye and sought treatment from several physicians. In an untreated state his vision was 20/400. Fairley filed a

claim on his accidental dismemberment policy for loss of sight in that eye. Doctors recommended a corneal transplant which Fairley underwent after much reluctance. After the operation Fairley's vision remained at 20/400, but could be corrected to 10/20 with a contact lens. Fairley was fitted with a contact lens, but found the lens very uncomfortable and only wore it sporadically. He had difficulty wearing the lens while working. The insurance company determined that Fairley's loss of sight was not irrevocable and denied coverage. This Court reversed the plan administrator's determination and awarded benefits to Fairley on the basis that Fairley could not wear the contact in real world conditions. The Fifth Circuit determined that since this was an ERISA plan, factual findings should be disturbed only if the plan administrator (Prudential) abused its discretion. Finding no abuse of discretion, the Fifth Circuit reversed and rendered.

(c) Heptinstall v. Blount, CA H90 0254, 92-07481 (5th Cir. Aug. 11, 1993). Affirmed in part, reversed in part, and remanded.

Heptinstall, a state prisoner, pled guilty to aggravated assault. He then filed a pro se complaint alleging that since the search warrant did not describe the guns seized there was an illegal search and seizure; that as a pretrial detainee he was confined in unsanitary conditions, without adequate ventilation, in an overcrowded cell, and that this constituted a violation of the due process clause of the 14th Amendment; that he was denied access to the courts because he was not provided with writing materials and stamps; and that he was deprived of property in that an officer misappropriated \$200 in cash, that the sheriff inappropriately turned the keys to his shop over to his ex-wife, and that law enforcement officers failed to return seized property. Heptinstall failed to respond to discovery and was ordered by the Court to submit to a deposition. Heptinstall refused to be sworn at his deposition, answered a few questions and terminated the deposition by saying "Case closed, gentlemen. Bye." Defendants moved to dismiss under Rule 37 as a sanction for failure to obey a court order and under Rule 12 for failure to state a cause of action. Heptinstall failed to respond to the motion to dismiss. This Court granted the motion to dismiss on both grounds. Heptinstall moved for additional time to appeal, which this Court granted. Defendants argued that this Court should not have allowed Heptinstall additional time within which to appeal. The Fifth Circuit concluded this Court did



not abuse its discretion in granting the extension of time to plaintiff, affirmed the dismissal of the claims against defendants in their official capacities and affirmed the Court's dismissal of the deprivation of property claim. The Fifth Circuit agreed that plaintiff's failure to comply with a court order subjected plaintiff to sanctions but concluded that dismissal was too severe. The Fifth Circuit reversed and remanded the case as to the claims of illegal search and seizure, unconstitutional conditions of confinement, and denial of access to the courts against certain defendants in their individual capacities; and modified the Rule 12 dismissal of other claims to reflect dismissal without prejudice.

(d) U.S. v. West, CR S92 00015 03, 93-07042 (5th Cir. July 8, 1993). Affirmed in part, reversed in part, and remanded.

West was convicted by a jury of conspiracy to possess cocaine with intent to distribute, interstate travel in aid of unlawful activity, and possession with intent to distribute a controlled substance. West previously had been convicted under a separate indictment of conspiracy to possess marijuana, interstate travel in aid of unlawful activity, and possession with intent to distribute marijuana. At this second trial, West moved for acquittal as to the conspiracy to possess cocaine charge on the basis that there was only one conspiracy to distribute both cocaine and marijuana and that the second indictment and trial constituted double jeopardy. This Court denied West's motion for acquittal, but gave West the benefit of the doubt and made the sentence on the second conviction run concurrent with his previous conspiracy conviction. The Fifth Circuit affirmed West's second conspiracy conviction in regard to the counts relating to interstate travel in aid of unlawful activity, and possession with intent to distribute a controlled substance. The Fifth Circuit found that the evidence established only one conspiracy and reversed the conviction for conspiracy to distribute cocaine.

(e) Marshall Durbin Cos. V. United Food & Commercial Workers Union, 2:98-CV-241; 00-60597 (5th Cir. May 15, 2001). Vacated in part; affirmed in part, and remanded.

This case involved a challenge to an arbitrator's decision under the Federal Arbitration Act. Marshall Durbin Company fired Theatrice Taylor because of alleged insubordination.

Theatrice Taylor filed a grievance through the United Food & Commercial Workers Union. The matter was submitted to arbitration and the arbitrator found that Theatrice Taylor was not insubordinate and that she should be reinstated without back pay. Marshall Durbin filed suit to reverse the arbitrator's decision. This Court had reservations about the arbitrator's decision that there was no insubordination, based on the facts reflected in the record, but under controlling case law affirmed the arbitrator's decision and ordered Marshall Durbin to reinstate Theatrice Taylor. In a subsequent motion, the union sought attorney's fees and back pay for Theatrice Taylor. This Court denied both requests finding that it had no authority to set aside the arbitrator's decision that no back pay should be awarded, although this Court felt that if reinstatement was appropriate that back pay should be awarded. The Fifth Circuit affirmed the denial of attorney's fees but vacated the decision not to award back pay, citing cases from other circuits, and deciding that the arbitrator's award of reinstatement without back pay was ambiguous because the arbitrator did not contemplate the delay caused by a challenge under the Federal Arbitration Act. The Fifth Circuit remanded the case with instructions to remand the case to the arbitrator to resolve the issue of back pay.

(f) Woolwine Ford Lincoln Mercury v. Consolidated Financial Resources, Inc., 2:98-CV-148; 00-60314 (5th Cir. Dec. 27, 2000). Vacated.

This was a diversity case involving a dispute over the sale and financing of automobiles. Defendant finance company released proceeds to a middleman without obtaining the titles from Woolwine, the seller. The middleman became financially insolvent. The issue was whether the seller or finance company would suffer the loss. During pendency of the litigation the parties reached a compromise settlement wherein each would suffer one-half of the loss. On January 12, 2000, the Court dismissed the case with prejudice reserving the right to enforce the settlement for a period of 35 days after the dismissal. On February 25, 2000, Woolwine filed a motion to enforce the settlement agreement. Defendant filed a response and stipulated that the motion to enforce settlement had been timely filed. Defendant fired its attorney, contacted this Court and requested a continuance. After obtaining the continuance, Defendant contacted court personnel the afternoon before the hearing to obtain details relative to the hearing, but failed to appear at the hearing. The Court entered judgment enforcing

the settlement. Defendant appealed. The Fifth Circuit held that the motion to enforce settlement was not filed within thirty-five days after the case was dismissed and therefore the Court had no jurisdiction. The judgment was vacated.

(g) Rayfield Johnson v. Forrest County Sheriff's Dept., 2:96-CV-291; 98-60556 (5th Cir. Feb. 15, 2000). Vacated and remanded.

Plaintiff, a state prisoner, filed a complaint challenging the defendant's jail policy prohibiting inmates from receiving magazines by mail. The sheriff cited reasons for the ban as being the danger of fire, the possibility that inmates could use magazine pages to stop toilets, and the potential for messy cells. This Court adopted the recommendation of the Magistrate Judge and dismissed the complaint. Based on the First Amendment, the Fifth Circuit vacated the order of dismissal, directed that the plaintiff be allowed to amend his complaint to allege a claim of retaliation, and remanded the case to this Court for further proceedings.

(h) United States of America v. Roger O. Dyess, 2:97-CV-163; 98-60174 (5th Cir. Mar. 22, 1999). Vacated in part, affirmed in part, and remanded.

Dyess was convicted of mail fraud by arson at a trial before this Court. His conviction was affirmed by the Fifth Circuit in an unpublished opinion. Subsequently Dyess filed a motion for a new trial and a motion to set aside sentence under Section 2255. In accordance with the Report and Recommendation from the Magistrate Judge, this Court denied the motion for a new trial and dismissed the petition for habeas as time barred. The Magistrate Judge's Report and Recommendation as to the habeas petition was based upon a Second Circuit decision that concluded that the one year statute of limitations found in 28 U.S.C. § 2244(d)(1) expired on April 23, 1997. After this Court dismissed the complaint, the Fifth Circuit rendered a decision determining that the one year statute of limitations under 28 U.S.C. § 2244(d)(1) expired on April 24, 1997, rather than April 23. The Fifth Circuit affirmed this Court's denial of the motion for a new trial, vacated this Court's dismissal of Dyess' Section 2255 motion, based on the intervening Fifth Circuit decision, and remanded the matter to this Court for consideration of Dyess' Section 2255 motion. After remand, the Government moved for downward departure based upon

substantial assistance and Dyess voluntarily dismissed his Section 2255 motion.

(i) Herman Barnes v. Edward Hargett, CA-H-88-0223, 92-7436 (5th Cir. April 15, 1994). Vacated in part, affirmed in part, and remanded.

Barnes, a state prisoner, serving two consecutive life sentences for two capital murders committed during the course of an armed robbery, filed for habeas relief alleging an illegal arrest, involuntary confession, and an unreasonable detention prior to his initial appearance. This Court adopted the Magistrate Judge's Report that characterized plaintiff's issues as Fourth Amendment challenges precluded from federal review by Stone v. Powell. The Fifth Circuit affirmed this Court's decision that the Fourth Amendment issues had been fully litigated in state court and were barred from relitigation on collateral federal review. Construing the complaint most favorably to plaintiff, the Fifth Circuit, however, held that the issue of the voluntariness of plaintiff's confession should have been considered under the Fifth, Sixth, and Fourteenth Amendments. The Fifth Circuit remanded the case for a determination as to whether plaintiff exhausted his state court remedies on the voluntariness issue, and if so, for an analysis of these constitutional claims. This Court then remanded this case to another Magistrate Judge who recommended that the petition for habeas be dismissed. This Court adopted the subsequent recommendation of the Magistrate Judge and dismissed the petition. The Fifth Circuit then affirmed the dismissal of plaintiff's petition for habeas.

(j) Charles Sylvester Bell v. Lee Roy Black, 2:91-CV-118, 93-7484 (5th Cir. April 4, 1994). Vacated and remanded.

This was a habeas case involving a prisoner in state custody. The Fifth Circuit vacated this Court's judgment with instructions to dismiss plaintiff's federal habeas petition for failure to exhaust, without prejudice.

(k) U.S. v. Arthur Loper, 1:94-CV-560, 95-60274 (5th Cir. May 27, 1996). Vacated and remanded.

Loper was convicted of conspiracy to distribute cocaine. This Court imposed an enhanced statutory minimum sentence of 120 months under U.S.S.G. § 5G1.1(b) which requires a court

to impose the statutory minimum sentence where it is greater than the maximum of the applicable guideline range. Loper's conviction was affirmed on direct appeal in an unpublished opinion. Loper then filed a Section 2255 motion to vacate, set aside, or correct his sentence. This Court denied plaintiff's motion. The Fifth Circuit noted that this Court should have set out its findings of fact and conclusions of law, vacated the dismissal, and remanded for resentencing because the Government failed to give notice that it would seek an enhanced sentence as required under Section 851(a)(1).

(1) U.S. v. Marlon Johnson, 1:97-CV-571, 99-60706 (5th Cir. Dec. 7, 2000). Vacated and remanded.

Johnson pled guilty to conspiracy to possess with intent to distribute cocaine and conspiracy to intimidate a witness. He waived his right to appeal his sentence. Johnson filed a § 2255 motion alleging ineffective assistance of counsel, in that his attorney failed to argue for a three point reduction for acceptance of responsibility; failed to challenge the use, for enhancement, of a prior state conviction that was allegedly constitutionally infirm; and failed to file a notice of appeal as requested. This Court adopted the Magistrate Judge's Report and Recommendation, overruled Johnson's Objections, and denied Johnson's Section 2255 motion. The Fifth Circuit's remand is somewhat contradictory. In footnote four on page three of the opinion, the Appellate Court said "Johnson's allegations are not precise as to whether he challenges that he was not counseled, or instead, that his plea was involuntary. This is an issue the district court should explore on remand. Ultimately to succeed, Johnson will have to prove that his guilty plea was flawed, not just that he requested an appeal." However, in the final sentence of the remand order, the Court stated "The sole question on remand is whether Johnson requested that his attorney file a direct appeal challenging the guilty plea and, if so, whether the attorney failed to file the appeal." The Appellate Court on page four of its opinion in footnote seven stated "The district court should be impatient with any attempt to discuss (1) the breach of the plea agreement, (2) any challenge to the sentence, (3) the use of the uncounseled misdemeanor, or (4) an ineffective assistance of counsel claim relating to the waiver of Johnson's right to appeal his sentence." This Court re-referred this matter to the Magistrate Judge for hearing in accordance with the Fifth Circuit remand.

(m) U.S. v. Four Parcels of Land, CA-H89-0201, 93-07256 (5th Cir. Feb. 10, 1994). Affirmed in part, vacated in part, and remanded.

This Court, on motion for summary judgment, granted civil forfeiture of four parcels of land owned by Donnell and Bessie Baylous. In its motion, the Government alleged that one of the four parcels of land was used in connection with the distribution of crack cocaine and that the other three parcels were acquired with proceeds from drug sales. In a responsive affidavit, Bessie Baylous stated that three of the parcels of land were purchased with money from legitimate sources. For more than twelve months, the Baylouses failed to respond to the Government's motion. This Court relied on affidavits from confidential informants to establish that the three parcels were indeed obtained with drug money. The Fifth Circuit affirmed the forfeiture of the one parcel used in connection with the distribution of crack cocaine but vacated the forfeiture of the remaining three parcels. The Fifth Circuit held that the affidavit of Bessie Baylous created a genuine issue of material fact as to the source of funds used to purchase the three parcels and that summary judgment, therefore, was inappropriate. The Fifth Circuit concluded that on remand the trial court could consider whether the Baylous had filed timely responses. Ultimately default judgment was entered for the Government and the appeal of that judgment to the Fifth Circuit was dismissed.

(n) Garlotte v. Miss. Dept. of Corrections, 2:93-CV-246, 94-60544 (5th Cir. Feb. 24, 1995). Affirmed in part, vacated in part, and remanded.

Three prisoners challenged a regulation that prohibited the possession of word processors and typewriters with memory and sought a temporary restraining order and a preliminary injunction. Prison officials contended that the regulation was necessary because these devices were used to store "scam letters, gambling pool information, prison officials' phone numbers and addresses and gang related information." This Court accepted the recommendation of the Magistrate Judge and dismissed the complaint. The Fifth Circuit affirmed the dismissal of the denial of the access to the courts claim, the denial of the claim that the prisoners' freedom of speech and association had been abridged, the denial of the Ninth Amendment claim of right to possess word processors and typewriters with memory, the denial of plaintiffs' procedural due process claim, and the denial of plaintiffs'

request for an injunction or temporary restraining order. The Fifth Circuit vacated the dismissal of the prisoners' equal protection claim, their substantive due process claim, and their claim under the Takings Clause, because plaintiffs had alleged discriminatory and arbitrary enforcement of the regulation. On remand, the parties agreed to a non jury trial before a magistrate judge. The magistrate judge ruled that the plaintiffs failed to prove their constitutional claims and a judgment was entered for defendant. No appeal was taken.

(o) Abrams v. Reichhold Chems., 2:92-CV-122, 95-60784 (5th Cir. July 2, 1996). Affirmed in part, vacated in part, and remanded.

This was a complex toxic torts case. This Court supervised the settlement of more than 4000 claims. At the time of this appeal, only the claims of the fifteen appellants remained in litigation. This Court entered several orders requiring plaintiffs to provide medical information demonstrating causation. Seven of the appellants sought to comply with the Court's last order to produce medical evidence. Eight made no attempt to comply with any of the Court's orders requiring production of medical evidence to support causation. This Court concluded that the proffered expert testimony would not be admissible at trial, granted summary judgment against the seven plaintiffs who had produced medical evidence, dismissed their claims for fear of future illness, and dismissed the claims of the remaining eight plaintiffs for failure to comply with the various court orders requiring them to produce some evidence of causal connection. The Fifth Circuit affirmed the Court's rulings as to the seven plaintiffs who had produced evidence but reversed this Court's dismissal as to the eight plaintiffs who had produced no evidence, but noted that the Court could consider these claims for summary judgment. On remand, this Court granted defendant's motions for summary judgment as to these remaining plaintiffs and they appealed but dismissed their appeal.

The above unpublished opinions are all of the unpublished opinions that I could find reversing or seriously criticizing my decisions or rulings after reviewing my files and requesting the Clerk of the Fifth Circuit to do the same.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

(a) McGee v. U.S., 863 F. Supp. 321 (S.D. Miss. 1994). This was one of the original cases challenging the Brady Handgun Bill. This Court concluded that the part of the Brady Bill requiring local sheriffs to perform certain duties was unconstitutional under the Tenth Amendment. This opinion was affirmed by the Fifth Circuit. 79 F.3d 452 (1996) (Koog v. U.S.) The Supreme Court denied certiorari. 521 U.S. 1118, 17 S. Ct. 2507, 138 L.Ed.2d 1011 (1997).

(b) Yates v. Turzin, et al, 786 F. Supp. 594 (Miss. 1991). Held that defendants were not amendable to suit in Mississippi since tort was not committed in Mississippi, manufacturer was not doing business in Mississippi, and under the Due Process Clause there were insufficient minimum contacts with the State to support long arm jurisdiction.

(c) Neal v. Puckett, (2:97cv90PG - S.D. Miss.) Although the opinion of this Court denying habeas corpus in this death penalty case was not published, the Fifth Circuit affirmed this Court's denial of habeas. Interpreting Williams v. Taylor, 529 U.S. 362, 120 S. Ct. 1495, 146 L.Ed.2d 389 (2000), a panel of the Fifth Circuit held that although the Mississippi Supreme Court's conclusion of lack of prejudice was incorrect, it was not an unreasonable application of clearly established federal law. Judge Jones, who concurred, was of the impression that the Mississippi Supreme Court did not incorrectly interpret the prejudice prong of Strickland. The opinion of this Court dealt with a number of issues argued by the plaintiff. The Fifth Circuit granted a Certificate of Appealability on only one issue, ineffective assistance of counsel. Before this Court, the main argument had related to granting of an instruction later determined by the U. S. Supreme Court to be unconstitutional. This Court analyzed the instruction under Brecht v. Abrahamson, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993), and held that there was no prejudice from the granting of this instruction. As noted, when this case went to the Fifth Circuit, that issue was not even argued. Ineffective assistance of counsel, which was not argued nearly so hard before this Court as it was in the Fifth Circuit, was the only issue before that Court. On that issue this Court had ruled in accordance with Judge Jones' concurrence.



(d) Fairley v. Forrest County, 814 F. Supp. 1327 (S.D. Miss. 1993). This was a case involving the one man-one vote principle of the Equal Protection Clause and reapportionment based on population shifts. The case analyzed the history of the one man-one vote principle and discussed the problems that occur when courts intrude into areas normally reserved for legislative bodies, including the breaking of precinct, beat and county lines, separating communities of interest and ignoring things considered by the voters to be important which can appropriately be considered by legislative bodies but not courts. The case also dealt with issues of special elections and the deference to be accorded local representative bodies in their redistricting efforts.

6. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed.

- a. During the year 1962 I served as prosecuting attorney for the City of Laurel in Municipal Court. This was an appointed position.

- b. From 1964 to 1968 I served as prosecuting attorney of Jones County, Mississippi. This was an elected position.

- c. From 1972 until 1980 I served in the Mississippi State Senate which is an elected position.

State (chronologically) any unsuccessful candidacies for elective public office.

- a. In 1967 I narrowly lost an election to the House of Representatives for the State of Mississippi.

- b. In 1978 I was a candidate for the United States Senate in the Republican Primary and lost that primary election to now U. S. Senator Thad Cochran.

- c. In 1979 I won the Republican nomination for Attorney General of Mississippi and narrowly lost the general election to later Gov. Bill Allain.

7. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not clerk.

2. whether you practiced alone, and if so, the addresses and dates;

I practiced alone from June of 1961 until September 1961 at 529 Central Avenue, Laurel, MS 39440.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

(a) From September 1961 until January 1971 I was a partner in the law firm of Gartin, Hester and Pickering, 529 Central Avenue, Laurel, MS 39440.

(b) During 1971 and 1972 I practiced law under the firm name of "Law Offices of Charles W. Pickering," 529 Central Avenue, Laurel, MS 39440.

(c) From 1973 to January, 1980 I practiced law in the firm of Pickering & McKenzie, 529 Central Avenue, Laurel, MS 39440.

(d) In 1980 I again practiced law under the firm name of "Law Offices of Charles W. Pickering," 529 Central Avenue, Laurel, MS.

(e) From 1981 until approximately 1986 I practiced law in the firm of Pickering & Williamson, 529 Central Avenue, P.O. Box 713, Laurel, MS 39441.

(f) From approximately 1986 until 1990, when I was appointed to the bench, I practiced law in the firm of Pickering, Williamson & Walters, 529 Central Avenue, P.O. Box 713, Laurel, MS 39441.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From June 1961 until 1990 I engaged in the general practice of law. In 1962 I served one year as city prosecuting attorney prosecuting misdemeanor criminal cases. From January 1964 until January 1968 I was prosecuting attorney for Jones County, Mississippi, and engaged in the prosecution of misdemeanor and felony criminal cases. In 1969, for a brief period of time, I was part-time city judge in Laurel, Mississippi. I did a limited amount of criminal defense work. However, I primarily engaged in civil practice.

I represented a bank for some six or seven years (approximately 1980 to 1987) and a major insurance company for a brief period of time (in the mid-1970s). I represented an oil company (approximately 1968 to 1990) and the local cable television company (approximately 1964 to 1990). I primarily handled negligence claims.

During the early years of my practice, I did a considerable amount of title work. I did some estate practice. For many years I did a limited amount of domestic practice. In the first few years of my practice, I handled a few bankruptcy matters. In summary, I had a general practice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

It is difficult to describe typical former clients since my law practice was so varied. My clients requested help with land transactions, preparation of wills, contracts, and domestic problems. Other clients had business or other commercial work to be done. I represented some business clients on a retainer basis. Although personal injury clients did not comprise the largest number of my clients, personal injury work did represent the biggest part of my practice. Most of these clients had either lost a family member or had received a personal injury.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

In the last five years of my practice, I appeared in court regularly. I did not appear more because we settled by far the largest percentage of our cases.

2. What percentage of these appearances was in:  
 (a) federal courts;

Approximately 20 to 30 percent.

- (b) state courts of record;

70 to 80 percent.

- (c) other courts.

Occasionally.

3. What percentage of your litigation was:  
 (a) civil;

98 percent.

- (b) criminal.

2 percent.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In the last five years of my practice, I was sole or chief counsel in approximately ten cases tried to verdict.

5. What percentage of these trials was:  
 (a) jury;

Most of the cases that I tried were before a jury.

- (b) non-jury.

Very few of the cases that I tried were non-jury.

8. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

a. Style of case: Glaston Hilbun, et al vs. Ralph Pickering, et al, No. 19,026

Summary of case: Around 1910 a Mr. Hilbun deeded 40 acres of land to one of his children for life with a remainder interest to his grandchildren born of this child. In the 1920's this property sold for taxes. The company that bought the 40 acres of land at the tax sale filed a confirmation suit. In the 1930's or 40's Ralph Pickering purchased this 40 acres of land and established his home and other improvements on the land. In the late 1950's the life tenant died and the remaindermen filed suit to cancel the tax sale that occurred in the 1920's and to confirm their title to the property. It was plaintiffs' contention that their interest did not vest until the death of the life tenant, that the statute of limitations had not run, that the tax sale was void because statutory steps had not been followed, and that the confirmation suit was void because they were minors at the time of the confirmation suit and process had not been properly served upon them.

Although this was not the first case that I tried, it was by far the most important and significant case that I tried during my first couple of years of law practice. There were numerous complicated issues of law that required extensive research, including the doctrine of equitable estoppel, laches, statutory requirements for a valid tax sale, and statutory requirements for process on minors. This involved the homestead of a cousin who lived in the small rural community in which I was reared. This case was tremendously important to me.

Party or parties I represented: Ralph Pickering and his wife

Nature of my participation: I was the chief counsel throughout the handling of this matter. Although I associated an older lawyer to assist me in this matter, he died before trial. I associated another experienced attorney and he became sick just before the trial date. The day before trial I associated a third lawyer to assist

in this matter. I did all of the trial preparation and 75 to 80 percent of the trial of the case.

Final disposition: The case was dismissed with prejudice. Ralph Pickering and wife kept their homestead. I filed discovery and required the complainants to specify what they alleged to be the defect in the tax sale. Mississippi had a 1930 Code. The complainants had researched the law back to the 1930 Code. However, the law had been changed in the 1920's and although the proof they offered would have been sufficient under the law as it existed from 1930 forward, it was inadequate to establish a case under the law that existed in the 1920's. The discovery had doomed the case of the complainants. They simply did not meet their burden of proof. Extensive research paid off. The complainants did not know until after the case was submitted to the court and we were engaged in final arguments that they had proven that the tax sale would have been void under the wrong law, and not the law that was applicable at the time the tax sale took place.

Date of trial: August 8, 1962

Name of court: Chancery Court of Second Judicial District of Jones County, Mississippi

Name of judge: Hon. L. B. Porter, deceased

Name, address and phone number of co-counsel: Hon. Robert L. Riddley, North Carolina, address unknown

Name of counsel for other party or parties: The firm of McFarland and McFarland represented the complainants. Joe A. McFarland, who later became a state circuit judge and who actually tried the case, is now deceased. The other member of this firm was Hon. Robert H. McFarland, former U.S. District Judge for the Canal Zone, now retired from the practice of law. His address is P. O. Box 445, Bay Springs, MS 39422, (601) 764-2145.

Citation: This case was not appealed and consequently was not reported.

b. Style of case: State of Mississippi vs. Tilson (Bud) Stringer, No. 5133

Summary of case: Tilson (Bud) Stringer operated a motel and bar in the City of Laurel, Mississippi. In 1965 a woman who

apparently was working with Stringer as a prostitute attempted to commit suicide. It was discovered that two teenage girls were living at the motel and were engaging in prostitution. As county prosecuting attorney, I filed charges against Tilson (Bud) Stringer for contributing to the delinquency of minors.

This was a criminal case I prosecuted early in my law practice. Although Tilson (Bud) Stringer was alleged to have been involved in many criminal activities, he had never spent any time in jail prior to this trial. When I ran for State House of Representatives in 1967, Stringer claimed that he hauled enough voters to the polls to vote against me to cause my defeat.

Party or parties I represented: The State of Mississippi.

Nature of my participation: I was the sole prosecutor in this case.

Final disposition: The jury returned a verdict of "guilty." The case was appealed to all available courts. The defendant was given the maximum sentence which he served in jail.

Date of trial: May 12, 1965

Name of court: County Court of Jones County, Mississippi.

Name of judge: Hon. Luther Austin, deceased.

Name of co-counsel: none

Name of counsel for other party or parties: Hon. George Maxey, deceased; Hon. Gene Clark, P. O. Box 525, Laurel, MS 39441, (601) 649-7823.

Citation: 191 So.2d 851

c. Style of case: State of Mississippi vs. Lavelle Stockman, No. 937

Summary of case: In 1967 I was serving as county prosecuting attorney. At that time there was a great deal of violence being committed by members of the Ku Klux Klan. There was a violent labor strike. People were shooting into homes of people who had gone back to work in the plant that was being picketed. At the scene of one of these homes law

enforcement officials recovered shotgun shell hulls. These hulls obviously came from the gun used to fire into the home. The hulls from these shotgun shells were turned over to the state crime lab. Later the man who drove the car in this shooting incident confessed. He implicated Lavelle Stockman as the man who shot into the house. We obtained an arrest warrant for Lavelle Stockman and a search warrant for his home. A shotgun was recovered and submitted to the crime lab. It was determined that the hulls of the shotgun shells recovered at the scene had been fired from the gun found in the home of Lavelle Stockman. I was convinced of the guilt of Lavelle Stockman. It was one of the strongest cases of circumstantial evidence in which I had been involved. In addition to the circumstantial evidence, we had the direct testimony of an accomplice who was driving the car. Nevertheless, the jury quickly found Lavelle Stockman not guilty.

I have a great deal of faith in the jury system. However, this case drove home the point to me that in particular situations both prejudice and fear can cause a jury to make a mistake.

Party or parties I represented: State of Mississippi.

Nature of my participation: The District Attorney was the chief counsel for the case. I served as co-counsel in trying and presenting this case.

Final disposition: Not guilty.

Date of trial: December 1967

Name of court: Circuit Court of First Judicial District of Jones County, Mississippi.

Name of judge: Hon. Lunsford Casey, deceased.

Name of co-counsel: W. O. Dillard, 101 N. State Street, Jackson, MS 39225, (601) 355-7961.

Name of counsel for other party or parties: Hon. George Maxey, deceased; Hon. Gene Clark, P. O. Box 525, Laurel, MS 39441, (601) 649-7823.

Citation: Not reported.



d. Style of case: Florence Kaplin Miller and Henry M. Ginsburg vs. Carson Biglane and Robert Smith, No. H74-116(C)

Summary of case: In the 1950s the Commercial National Bank as trustee of the estate of Sam Kaplin entered into a lease of commercial property located at an intersection in Laurel, Mississippi, on which was located a store building. This property at that time was in a declining neighborhood. After entering into this long-term lease Robert Smith and Carson Biglane improved the property on both sides of the street. Thereafter property values increased greatly. When this case was tried, more than 20 years after the original lease was executed, reasonable rental value of this property had greatly increased and exceeded the amount provided for in the lease. The plaintiffs contended that the lease had not been properly entered into and was void. Plaintiffs also contended that the consideration was so grossly inadequate as to amount to a gratuity and no consideration. The plaintiff was a resident of New York. This action was maintained in the federal courts on the basis of diversity of citizenship. This case shows the diversity of cases handled by our firm.

Name of parties I represented: Robert Smith and Carson Biglane, owners of Westside Grocery.

Nature of my participation: I was the chief counsel in handling this entire matter.

Final disposition: The court dismissed the complaint and confirmed the lease.

Date of trial: September 1976

Name of court: U. S. District Court for the Southern District of Mississippi.

Name of judge: Hon. William Harold Cox, deceased.

Name and address of co-counsel: Hon. Franklin McKenzie, Jr., now Chancery Judge of 19th Chancery District, P. O. Box 1961, Laurel, MS 39441, (601) 428-7625.

Name of counsel for other party or parties: Hon. Kalford C. Ratcliff, deceased, and Hon. David Ratcliff, P. O. Box 706, Laurel, MS 39441, (601) 425-2303; and Hon. Anthony Thaxton, P. O. Box 106, Laurel, MS 39441, (601) 649-3351.

Citation: Not reported.

e. Peggie Mae Ratcliffe, et al vs. W. C. "Dunk" Crosby, et ux, No. 26,421

Summary of case: Peggie Mae Ratcliffe, acting on behalf of her brother, the Rev. Sam Graves, purchased a tract of land from David Graves, her nephew. A young lawyer in our law firm prepared this deed. He made a mistake in dictating the description. Thereafter W. C. Crosby hired an attorney to check the record to see what land David Graves still owned. This attorney discovered the mistake in the deed to Peggie Mae Ratcliffe. W. C. Crosby obtained a deed from David Graves to the property that should have been included in the deed from David Graves to Peggie Mae Ratcliffe. Later when this mistake was discovered, our firm filed suit against W. C. Crosby in an attempt to correct the error that had been made. Our theory of the case was that the mistake in the description of the deed was patently obvious and that this should have constituted sufficient constructive notice to the purchaser to require further inquiry on his part in order for him to be a "bona fide purchaser for value without notice." By this time, David Graves had been convicted of a felony in Georgia and was in the Georgia State Penitentiary. We had to travel to the Georgia State Penitentiary to take his deposition. The trial court held that a defective description was not notice and dismissed our complaint. We appealed to the Mississippi Supreme Court. The Mississippi Supreme Court affirmed the ruling of the trial court.

This case emphasized the need to be very careful and thorough to avoid mistakes in preparation of documents. It also emphasized the need to be open and candid with one's clients. I candidly and frankly acknowledged to our clients the mistake that had been made and kept them regularly posted on the progress that we were making in trying to correct the error. When the Supreme Court finally dismissed our complaint, it was no trouble to resolve this matter with our clients and to make them whole. This we quickly did.

Parties I represented: Peggie May Ratcliff and her brother, Sam Graves.

Nature of my participation: Chief counsel.

Final disposition: Bill of complaint dismissed, appealed to Supreme Court and ruling of lower court affirmed.

Date of trial: February 1976

Name of court: Chancery Court of the Second Judicial District of Jones County, Mississippi, and the Mississippi Supreme Court.

Name of judge: Hon. J. Shannon Clark, P. O. Box 168, Waynesboro, MS 39367, (601) 735-4447.

Name, address and phone number of co-counsel: Hon. J. Larry Walters, P. O. Box 745, Laurel, MS 39441, (601) 649-4424.

Name of counsel for other party or parties: Hon. Matthew Harper, deceased.

Citation: 354 So.2d 802 (Miss. 1978).

f. Style of case: State of Mississippi vs. David L. Gray, No. 5540

Summary of case: David Gray, a young black man in his late 20's or early 30's, was charged with robbing a teenage white girl who was working in a store. Gray was charged with using a knife to commit the robbery.

Even though times had changed considerably, a black defendant charged in a crime of that nature still had a difficult time finding local counsel who would accept private employment to defend a charge of this nature. I had represented David Gray's father since shortly after I started practicing law. David Gray's parents approached me about defending him in this criminal matter and convinced me that he was innocent. The young girl who had been robbed was a granddaughter of a friend and supporter of mine in political campaigns. It was not an easy decision to make, but our firm came to the conclusion that David Gray was entitled to a good defense and agreed to accept employment in the case.

Party I represented: I represented David Gray, the defendant.

Nature of my participation: Chief trial counsel.

Final disposition: The first jury trial resulted in a hung jury. The second trial resulted in an acquittal. After the second trial, David Gray's parents were grateful and invited

all of us who had been involved in the trial to their home for a celebration dinner.

Date of trial: First trial May 21, 1981; Second trial September 30, 1981.

Name of court: Circuit Court of the Second Judicial District of Jones County, Mississippi.

Name of judge: Hon. James D. Hester, deceased.

Name, address and phone number of co-counsel: Hon. W. Dal Williamson, P. O. Box 394, Laurel, MS 39441 (601) 426-0056

Name of counsel for other party or parties: Hon. Donald Smith, then district attorney, 1915 23rd Avenue, Gulfport, MS 39502, (228) 868-8426; Hon. Larry Walters, P. O. Box 745, Laurel, MS 39441, (601) 649-4424.

Citation: None.

g. Style of case: Judy B. Smith vs. Younger Transportation, Inc., et al, No. 81-4-45

Summary of case: David Smith was killed while working at an oil well site helping to unload a truckload of pipe. One of the timbers that was used to roll the pipe from the truck bed to the pipe rack "kicked out" and another broke causing the pipe to fall to the ground and crush David Smith. Suit was filed against the trucking company on the theory that the driver of the truck was the "captain of the ship" and responsible for the safe unloading of his truck. The defendants defended on the basis that the deceased himself placed the timbers between the truck and the pipe rack. Thorough investigation revealed that even though this was true the truck driver came back and moved the timbers after they were put in place by the deceased. The case was tried to completion and while the jury was deliberating, the defendants made their first substantial offer. The case was settled for \$475,000.

A wife and two small children were left without adequate means of support. By this settlement we were able to secure the financial future of these children so that they could be supported during their minority and get an education. At the time this case was settled, the settlement was larger than any previous settlement or jury verdict before the Circuit Court of Jones County,

Mississippi. This case also demonstrated the need for thorough preparation and investigation of a case.

Party I represented: Judy Smith, the wife of David Smith, and her two children.

Nature of my participation: Hon. Jack Riley, attorney in Hattiesburg, who originally represented Judy Smith and her children, associated our firm to try this case. I was the chief trial counsel.

Final disposition: Settlement after submission to jury.

Date of trial: August 19, 1981

Name of court: Circuit Court of the Second Judicial District of Jones County, Mississippi.

Name of judge: Hon. James Hester, deceased.

Name, address and phone number of co-counsel: Hon. Jack Riley, P. O. Box 654, Hattiesburg, MS 39401, (601) 583-2607; Hon. W. Dal Williamson, P. O. Box 394, Laurel, MS 39441, (601) 426-0056.

Name of counsel for other party or parties: Hon. Matthew Harper, deceased.

Citation: Not reported.

h. Style of case: James M. Ainsworth vs. Tom's Foods, Ltd., a corporation, and Robert E. French, an individual, No. H79-0159N

Summary of case: Milton Ainsworth, a truck driver, who was approximately 57 or 58 years of age was driving an 18-wheel tanker loaded with gasoline on Highway 49 south of Collins, Mississippi, when an 18-wheeler pulled out into the road in front of the truck he was driving. It was early in the morning before day break. This was a divided four-lane highway. Our theory of the case was that the Tom's truck failed to yield the right-of-way and blocked both southbound lanes of traffic. The defense theory was that the Tom's truck occupied only one of the two lanes of traffic and that there was no reason for the truck driven by Milton Ainsworth to have collided with the Tom's truck.

This was one of the first cases that I handled that largely involved psychological injury. Milton Ainsworth had been a "pillar of the community" in the small town in which he lived. He had been active in community and church activities. At the time of his wreck Milton Ainsworth was hauling 10,000 gallons of gasoline. The fear of what could have happened if his tank truck had exploded or if the gas had caught on fire caused Milton Ainsworth to suffer serious emotional and psychological trauma. The testimony was that, after this incident, Milton Ainsworth was completely changed. He was disabled. This case was also significant in that the defendant driver contended that he had straightened the tractor of his truck in the road and was occupying only one lane of traffic at the time he was struck from the rear. However, after impact his tractor struck a bridge abutment on the right-hand side of the road. I consulted a professor of physics at the University of Southern Mississippi. By cross-examining the defendant on principles of physics, his testimony largely collapsed. The defendant's testimony enabled us to settle the case. The principle of physics used in cross-examination of this witness was that if an object is traveling in a given direction, it will continue to travel in that same direction when it is struck from behind by another object, unless it strikes an object that causes it to veer or change course. The question to the defendant was "When you were struck from the rear, if you were going straight down the road as you have testified, and were not turned cross ways of the road as testified to by the plaintiff, what did you strike that caused your vehicle to veer to the right and strike the bridge abutment?"

Party I represented: Milton Ainsworth

Nature of my participation: I was associated as chief trial counsel by Hon. Aubrey Calhoun. Another attorney had been engaged for this purpose but did not pursue the case.

Final disposition: After cross examination of the defendant and upon recommendation of the trial judge, this case was settled.

Date of trial: May 12, 1981

Name of court: U. S. District Court for the Southern District of Mississippi.

Name of judge: Walter L. Nixon

Name, address and phone number of co-counsel: Hon. Aubrey Calhoun, deceased; Hon. W. Dal Williamson, P. O. Box 394, Laurel, MS 39441, (601) 426-0056; and Hon. Robert D. Gholson, P. O. Box 6523, Laurel, MS 39441, (601) 425-0400.

Name of counsel for other party or parties: Hon. Dorrance Aultman, P. O. Drawer 750, Hattiesburg, MS 39401, (601) 583-2671; Hon. Lawrence Gunn, Jr., P. O. Box 1588, Hattiesburg, MS 39401, (601) 544-6770; Hon. Jon Mark Weathers, P. O. Box 18109, Hattiesburg, MS 39404, (601) 261-4100.

Citation: Not reported as case was settled during trial.

i. Style of case: Judith L. Adams vs. Doris H. Guy and Grady W. Guy, d/b/a Union Bus Station, No. 81-9-126

Summary of case: Judy Adams, a housewife with children, carried one of her children into the bus station in Laurel, Mississippi, to use a pay toilet. The janitor for the operators of the bus station had mopped the floor and had left a slippery cleaning detergent on the floor. The janitor did not clean up the slippery substance before he left the bathroom. Judy Adams slipped and fell. Judy Adams received no broken bones but she received extensive soft tissue injury. The scar tissue around her shoulder blades caused it to droop. She had to undergo numerous painful procedures whereby the therapist would literally tear the scar tissue by pulling on her shoulder blade and arm. Judy Adams was a highly motivated person and her inability to work as she had before the injury and her constant severe pain caused her serious problems in coping with her physical condition. Judy Adams incurred large medical bills. This case involved numerous expert witnesses necessary to prove the extent of the injury to Judy Adams. For the first time we also used video in the presentation of a case to the jury. The jury returned a verdict of \$150,000. This was another case of great need and we were able to partially meet the needs of our clients.

Parties I represented: Judy Adams and her husband, Narvel Adams

Nature of my participation: I was the chief counsel through the handling of this case.

Final disposition: Jury verdict of \$150,000 plus settlement of loss of consortium claim.

Date of trial: Concluded on February 2, 1982

Name of court: Circuit Court for the Second Judicial District of Jones County, Mississippi

Name of judge: Hon. James D. Hester, deceased.

Name, address and phone number of co-counsel: Hon. W. Dal Williamson, P. O. Box 394, Laurel, MS 39441, (601) 426-0056; Hon. Robert Gholson, P. O. Box 6523, Laurel, MS 39441, (601) 425-0400.

Name of counsel for other party or parties: Hon. Kenneth Bullock, P. O. Box 6400, Laurel, MS 39441, (601) 649-5239.

Citation: Not reported.

j. Style of case: Colon R. Shows vs. Jamison Bedding, Inc., and Mallon Dobbins, No. H78-0061(R)

Summary of case: Colon Shows was a passenger in a truck owned and operated by his employer, a rural electric power association. As the truck in which he was riding came upon the ramp onto I-59 in the City of Laurel, Mississippi, his vehicle was struck by an 18-wheeler. Colon Shows suffered many broken bones, a severe laceration to the scalp which resulted in considerable medical expense and severe permanent injury. It was our theory that the pickup truck in which the plaintiff was traveling had been in the right-hand lane of traffic several hundred feet when the pickup was struck from the rear by the 18-wheeler. The driver of the 18-wheeler denied this and contended that the pickup truck in which the plaintiff was riding swerved immediately in front of his truck causing the collision.

During the trial of this matter the trial judge recommended settlement of this case for \$170,000. The carrier for the defendant would not pay this amount. The jury returned a defense verdict. The trial judge gave a new trial, stating this was the first time in his 14 years on the bench that he had disturbed a jury verdict. The second trial resulted in a jury verdict of \$600,000. The defendant appealed this case to the Fifth Circuit Court of Appeals in New Orleans. It was affirmed. By the time this case was finally resolved, it involved a number of complicated legal issues, including the court's responsibility when reviewing a jury verdict. The defendant truck driver had given three different versions of how the wreck occurred, either in



depositions or at trial or to the police officer. Although I have great respect for the jury system, I learned that sometimes juries can be wrong.

Parties I represented: Mr. and Mrs. Colon Shows

Nature of my participation: I was the chief counsel throughout the handling of this matter.

Final disposition: Jury verdict of \$600,000 in favor of plaintiff; judgment affirmed by Fifth Circuit Court of Appeals in April, 1982.

Date of trial: First trial in April 1979, second trial May 5, 1980. Affirmed by Fifth Circuit Court of Appeals in April 1982.

Name of court: U.S. District Court for the Southern District of Mississippi, Fifth Circuit Court of Appeals

Name of judge: Hon. Dan Russell, Jr., P. O. Box 1930, Gulfport, MS 39502, (228) 863-2762

Name, address and phone number of co-counsel: Hon. Franklin C. McKenzie, Jr., now Chancery Judge of 19<sup>th</sup> Chancery District, P. O. Box 1961, Laurel, MS 39441, (601) 428-7625

Name of counsel for other party or parties: Hon. Dorrance Aultman, P. O. Drawer 750, Hattiesburg, MS 39401, (601) 583-2671; Hon. Lawrence Gunn, Jr., P. O. Box 1588, Hattiesburg, MS 39403, (601) 544-6770

Citation: 671 F.2d 927 (5th Cir. 1982).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

a. Perhaps the most significant group of cases that I have handled during the ten years that I have been on the federal bench did not result in any written opinions by me, but these cases did involve numerous rulings on complicated legal issues, resulted in four different trials over a period of six years consuming a considerable amount of time

and resulting in numerous appeals. These cases related to the execution-style murder of State Circuit Court Judge Vincent Sherry and his wife, involved criminal conspiracy, RICO, travel in interstate commerce to commit murder, use of interstate communication facilities to commit fraud, and centered around an extensive and complicated homosexual scam operating out of the Louisiana State Penitentiary at Angola with the avowed purpose of creating a slush fund to hopefully bribe then Louisiana Governor Edwin Edwards to pardon convicted murderer Kirksey Nix. The disappearance of scam funds as well as political motivation resulted in a brutal gangland type murder carried out by an itinerant carnival worker from Texas. In the last of these trials to be conducted, and after several weeks of testimony, some jurors accused a fellow juror of misconduct including sexual harassment toward a fellow juror. One of the most challenging tasks I have faced as a judge was protecting the integrity of those particular jury deliberations. The Fifth Circuit stated

. . . Judge Pickering proceeded in a very careful and conscientious manner. . . . [H]e consulted with the lawyers throughout, giving thoughtful consideration to their suggestions.

193 F.3d 852 at 861.

The juries in these four cases convicted numerous individuals on numerous counts. These convictions have all been affirmed.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None, except I will receive \$1,000 per month for life in the form of an annuity from General Electric Capital Assurance Company(the successor to Reliance Insurance Company).

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

a. As to any parties in which I own stock, I will recuse myself.

b. I will follow the dictates of 28 U.S.C. § 455 and cases interpreting it.

c. In 1967 I testified for the prosecution in the trial of then Imperial Wizard of the White Knights of the Ku Klux Klan Sam Bowers for the fire bombing death of civil rights activist Vernon Dahmer. I testified that Bowers had a bad reputation for peace and violence. Sam Bowers recently was convicted for the first time in state court for the murder of Vernon Dahmer. He filed a pro se complaint before me to declare the Mississippi Constitution unconstitutional and his conviction null and void. Another pro se plaintiff in that case, Shawn O'Hara requested this Court to recuse itself because this Court had previously sanctioned O'Hara for filing frivolous claims. I did not grant O'Hara's motion for recusal because the prejudice which he alleged insofar as he personally was concerned occurred in rulings of this Court on matters before the Court. However, O'Hara alleged that I should recuse myself because Sam Bowers had been responsible for defeating me in two elections, in retaliation for my testimony in his earlier trial. Since

O'Hara is not a lawyer, he could not file a motion for recusal for Bowers. However, I concluded that my previous testimony against Bowers and his contention that he had defeated me in previous political elections could reasonably be perceived as creating a bias. I sua sponte recused myself from the case. On the few occasions that motions for recusal have been filed, I have declined to recuse myself when the matter dealt with legal rulings I had made. This is the first case that I recall in which I have felt compelled to recuse myself because of what might be reasonably perceived as prejudice. However, I have recused myself in instances where I own stock in one of the parties.

I will continue to resolve potential conflicts of interest as I have done in the past, and as set out in response to this question.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

My Financial Disclosure Report is attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

a. Bush-Quayle Chairman for Mississippi in general election of 1988.

b. Co-chairman of Bush-Quayle campaign in Mississippi during primary, 1988.

- c. One of several co-chairmen of Reagan-Bush campaign in Mississippi, 1980.
- d. Republican nominee for Attorney General of Mississippi in 1979. Narrowly lost.
- e. Candidate, Republican nomination for U. S. Senate, 1978.
- f. As chairman of the Mississippi Republican Party in 1976, I coordinated much of the campaign in Mississippi for the Ford-Dole ticket.
- g. Candidate and elected to Mississippi State Senate in 1971 and 1975.
- h. In 1967, candidate, narrowly lost election for Mississippi House of Representatives.
- i. 1963, candidate and won election as county attorney of Jones County.
- j. Had lesser support positions in other campaign for Republican nominees from 1964 to 1980.

FINANCIAL STATEMENT  
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$21,500.00	Notes payable to banks-secured	none
U.S. Government securities-add schedule	none	Notes payable to banks-unsecured	none
Listed securities-add schedule	155,838.00	Notes payable to relatives	none
Unlisted securities--add schedule	36,500.00	Notes payable to others	none
Accounts and notes receivable:		Accounts and bills due	4,000.00
Due from relatives and friends	none	Unpaid income tax	none
Due from others	3200.00	Other unpaid income and interest	none
Doubtful	none	Real estate mortgages payable-add schedule	204,422.00
Real estate owned-add schedule	1,951,650.00	Chattel mortgages and other liens payable	none
Real estate mortgages receivable	none	Other debts-itemize:	none
Autos and other personal property	137,200.00		
Cash value-life insurance	43,000.00		
Other assets itemize:			
IRA	229,000.00		
Thrift	130,000.00		
Annuity (present value estimated)	60,000.00	Total liabilities	208,422.00
CRP payments (present value estimated)	12,000.00	Net Worth	2,571,466.00
Total Assets	2,779,888.00	Total liabilities and net worth	2,779,888.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	500,000.00 secured by real estate, value exceeds loan	Are any assets pledged? (Add schedule)	none, except real estate mortgages above
On leases or contracts	none	Are you defendant in any suits or legal actions?	no
Legal Claims	none	Have you ever taken bankruptcy?	no
Provision for Federal Income Tax	none		
Other special debt	none		

## SCHEDULE 1

## LISTED SECURITIES:

4082 shares of Union Planters Bank - \$146,952

150 shares of Sanderson Farms - \$1350

471 shares of Telecorp PCS, Inc. New A - \$7536

Total listed securities - \$155,838

SCHEDULE 2

UNLISTED SECURITIES:

200 shares of First Bank Shares, Inc. - \$1500  
 1000 shares of Bank of Jones County - \$10,000  
 20,000 shares of LS Communications, Inc. - \$10,000  
 5,000 shares of JP Systems, Inc. - \$15,000

Total unlisted securities - \$36,500



SCHEDULE 3

REAL ESTATE:

684 acre farm in rural Jones County with home, barn, timber, and various buildings

One-sixth interest under 80 acre tract of rural swamp land in Leflore County near Morgan City, Mississippi

260 acres in rural Jones County near Sandersville, Mississippi (4 lots or 12 acres developed, balance in trees

21 acres of rural land in Jones County, Mississippi, near Sandersville (6 lots developed

Joint interest in real estate in Northern Virginia

One-half interest in 286 acre farm in Covington County, Mississippi, on Leaf River

Minerals:

13 acres of non-producing minerals in S34, T7N, R12W, Jones County, Mississippi

35 acres non-producing minerals, S4&5, T17, R5E, Warren County, Mississippi

50 acres of minerals in S15, T6N, R12W, Jones County, Mississippi

10 acres non-producing minerals, S9, T2N, R12E, bonus, Jasper County, Mississippi

55 acres minerals, S30, T8N, R20W, Lawrence County, Mississippi

50 acres non-producing minerals, S20&29, T8N, R14W, Covington County, Mississippi

Interest in West Yellow Creek and West Chapperell Oilfields in Wayne County, Mississippi, with Tellus Energy Group

One acre non-producing minerals in Grimes County, Texas, Vol. 618, page 708

Other interests in small tracts of minerals

SCHEDULE 4

Real estate mortgages

Union Planters Bank, Deed of Trust on residence - \$204,422

AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>Person Reporting</b> (Last name, first, middle initial) Pickering, Sr., Charles W.		<b>2. Court or Organization</b> U.S. Court of Appeals, 5th Cir	<b>3. Date of Report</b> 05/30/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. Circuit Judge - nominee		<b>5. Report Type (check type)</b> <input checked="" type="checkbox"/> Nomination, Date 05/25/2001 Initial      Annual      Final	<b>6. Reporting Period</b> 01/01/2000 to 04/30/2001
<b>7. Chambers or Office Address</b> (current) 701 N. Main Street, Suite 228 Hattiesburg, MS 39401		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the **NONE** box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)☐ **NONE** (No reportable positions.)**NAME OF ORGANIZATION / ENTITY**

1 Owner of a farm

2

3

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)**DATE****PARTIES AND TERMS**☒ **NONE** (No reportable agreements.)

1

2

3

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)**DATE****SOURCE AND TYPE****GROSS INCOME**  
(yours, not spouse's)☐ **NONE** (No reportable non-investment income.)

1 General Electric Capital Assurance Co., annuity,

16,000.00

2

3

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pickering, Sr., Charles W.	05/30/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
	Exempt		

**VI. LIABILITIES**
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1	Bancorp South	secondary liab. on note secured by DT on prop. valued in excess of debt (paid off 2000)	J
2	Bancorp South	second liab. on note secured by DT on prop. valued in excess of debt	N
3			
4			
5			

\* VAL. CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Pickering, Sr., Charles W.	Date of Report 05/30/2001
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions

A. Description of Assets (including trust assets)  <i>Place "(3)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT				
1 Union Planters Corp. common stock	D	Dividend	M	T					
2 Bank of Jones County common stock		None	J	T					
3 First Bankshares, Inc.		None	J	T					
4 Sanderson Farms, common stock	A	Dividend	J	T					
5 LS Communications, Inc		None	J	T					
6 Telecorp PCS, Inc.		None	J	T					
7 J.P. Systems, Inc.		None	J	T					
8 SmartSynch, Inc.		None	J	T					
9 IRA # 1	D	div. cap.	M	T					
10		gain dist.							
11		interest							
12 - Money Fund									
13 This ends IRA # 1.									
14 IRA # 2	A	Interest	K	T					
15 - Money Funds									
16 - LS Communications Inc.									
17 This ends IRA # 2.									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

<b>FINANCIAL DISCLOSURE REPORT</b> Name of Person Reporting Pickering, Sr., Charles W.	Date of Report 05/30/2001
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**VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type Code (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type Code (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value: (J-P)	(4) Gain: Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					<b>EXEMPT</b>				
18 658 ac. farm-rural Jones Co.-50 ac. pasture-balance timberland	E	cattle, CR P	P1	W					
19 103ac. farm(95ac. rural Jones Co., 8ac. rural Covington Co., adj.)		None	M	W					
20 255 ac. farm-Jones Co.-rural	C	Rent	N	W					
21 21 acres, rural Jones County		None	K	W					
22 1/6th int. in 80 acres-swamp land, Leflore Co., MS		None	K	W					
23 1/2 int. in 308 acre farm, Covington Co., MS		None	M	W					
24 1 acre non-producing minerals-Grimes Co., TX		None	J	W					
25 13 acres non-producing minerals-Jones Co., MS		None	J	W					
26 35 acres non-producing minerals-Warren Co., MS		None	J	W					
27 50 acres non-producing minerals-Jones Co., MS		None	J	W					
28 10 acres non-producing minerals-Jasper Co., MS		None	J	W					
29 55 acres non-producing minerals-Lawrence Co., MS		None	J	W					
30 50 acres non-producing minerals-Covington Co., MS	D	Bonus	J	W					
31 Mineral interest-West Yellow Creek LLC-West ChappereLL LLC		None	L	W					
32 both operated by Tellus Energy, Wayne Co., MS									
33 Bank of Jones County account	A	Interest	J	T					
34 Bancorp South (account)	A	Interest	J	T					

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
Val Codes: J=\$15,000 or less (Col. C1, D3)		K=\$15,001-\$50,000 O=\$50,001-\$1,000,000		L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000		M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000		N=\$250,001-\$500,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2)		R=Cost (real estate only) U=Book Value V=Other		S=Assessment W=Estimated		T=Cash/Market			

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Pickering, Sr., Charles W.	Date of Report 05/30/2001
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**VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					<b>EXEMPT</b>				
35 Union Planters Bank (account)	A	Interest	J	T					
36 IRA # 3	A	Interest	K	T					
37 - Money Fund									
38 - Mutual Funds									
39 The ends IRA # 3.									
40 Note - Shirley West	B	prin & int	J	T					
41 Note - Robine & Welch	F	prin & int		T					
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
Val Codes: J=\$15,000 or less (Col. C1, D3)		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.***(Indicate part of report.)*

Line 18. CRP means Conservation Reserve Program of USDA.



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Pickering, Sr., Charles W.	Date of Report 05/30/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date 5-30-01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

a. I served as chairman of the Jones County Economic Development Authority from 1983 to 1985. I was the first and organizational chairman. During these two years I spent approximately one day per week working and putting this organization together which was a time-consuming delicate process. The purpose of this organization is to promote economic development and thereby enhance the quality of life for all of the citizens of Jones County and especially the disadvantaged and those needing a job. From 1985 until 2000, I continued to serve on the Board of Directors and to devote time to this organization, but not as much as during the years that I was its chairman.

b. During the five years just before I went on the bench, I averaged spending at least one hour per month giving advice and counsel to people who were disadvantaged and unable to pay a legal fee in regard to various legal questions that they might have relative to medicaid, welfare and other legal problems.

c. From 1983 to 1985 I served as president of Mississippi Baptists. This likewise required an extensive amount of time, at least one day every two weeks. It is the church's responsibility to help meet the needs of the disadvantaged and by helping my denomination I was making a contribution in this area.

d. During 1988 and 1989 I met with and coordinated a bi-racial group working to promote racial harmony in Jones County. This was a benefit to all Jones Countians, including the disadvantaged.

e. I am now a member of a group in Laurel meeting to develop a program for "kids at risk."

f. I serve on the Board of Directors of the Institute for Racial Reconciliation at the University of Mississippi.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

None

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission for the Southern District of Mississippi. Senators Thad Cochran and Trent Lott recommended that I be nominated. In my conversations with both of these Senators, there was no discussion of any case or of my judicial philosophy. I was interviewed by staff of the White House Counsel. They questioned me about my general judicial philosophy but discussed no specific cases and did not suggest that I should rule in any way in regard to any particular type of case. I have completed the relevant questionnaires pertaining to my nomination.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the

judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is the responsibility of the judiciary to interpret the law, not make law. A court has the responsibility of resolving the controversy between the parties who are before the court. It is neither responsible, nor appropriate, for the court to determine general policies that are the prerogatives of the legislative branches of government.

Once a decision is rendered in a case it should have similar application in subsequent cases involving other individuals in the same situation. However, it is dangerous to make the language so broad that it covers other individuals who might not be in the same circumstances as those particular parties. In other words, court decisions should answer the questions presented and not hypothetical questions involving others not before the court.

The courts should not impose broad, affirmative duties upon governments and society. The courts must, however, apply the Constitution and statutes of the United States, and follow Supreme Court rulings interpreting the Constitution and federal statutes.

The federal courts should not be increasing their jurisdiction by broadening interpretations and assuming jurisdiction over cases that are best left for other tribunals. The judiciary should avoid, where possible, imposing itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Senator SCHUMER. Thank you.  
Judge Armijo?

**STATEMENT OF M. CHRISTINA ARMIJO, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO**

Judge ARMIJO. Thank you, Mr. Chairman, Senator Kennedy, Senator DeWine. Let me first express my gratitude to my Senators Domenici and Bingaman. I greatly appreciate the courtesies that each of them has extended to me throughout this very, very long process, and especially the encouragement.

I am very, very proud to be here, especially under the circumstances when the business of our country must go on and this particular profession that we all represent here on this side of the table is so critical to that process. I am honored to be here.

I would like to introduce the family members that are with me today: my mother, Mary, who is here. Mom is from Las Vegas, New Mexico, the first Las Vegas. That is my hometown, 1836.

Senator SCHUMER. I am glad Senator Reid left before you said that.

[Laughter.]

Judge ARMIJO. And my brother Luis Armijo, here. Luis lives in Albuquerque. I have two sisters, Patricia and Francesca, who are unable to be here, but are here in spirit.

I do have, Senator Schumer, two good friends from your State, the State of New York, and I am so happy that they traveled through the late hours last evening, Fran and Jim Lieu, good friends of mine with a New Mexico connection.

Senator SCHUMER. Welcome.

Judge ARMIJO. I am very, very honored to be here and wish to thank you.

[The biographical information of Judge Armijo follows.]

## I. BIOGRAPHICAL INFORMATION (PUBLIC) mailed 8-22-01

1. Full name (include any former names used.)  
M. CHRISTINA ARMIJO (Birth name: Maria Christina Armijo)
2. Address: List current place of residence and office address(es).  
  
I reside in Santa Fe, New Mexico.  
  
Office Address: New Mexico Court of Appeals  
P.O. Box 2008  
Santa Fe, New Mexico 87504
3. Date and place of birth:  
  
January 17, 1951 Las Vegas, New Mexico 50
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Single
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
University of New Mexico 1968-1972 BA Cum Laude 1972  
University of New Mexico School of Law 1972-1975 JD 1975  
National Judicial College, Reno, Nevada  
--Essential Skills for the Appellate Judge 1997  
--Judicial Writing 1998
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
1973-1974 Law clerk to James Toulouse, Esq., Albuquerque, NM  
  
1973-1975 Advocacy Teaching Assistant: University of New Mexico School of Law  
  
1974-1975 Law clerk to Robert Melton (Miller & Melton, LTD) Albuquerque, NM

1976 to November-1978: I was employed as a staff attorney of Sandoval County Legal Services in Bernalillo, New Mexico. In approximately 1977 the agency merged with and became known as Northern New Mexico Legal Services.

1980 I taught a one semester business law course at New Mexico Highlands University, Las Vegas, New Mexico (date is approximate)

1978 to March 1996: From November 1978 through March 1996 I engaged in the private practice of law (M. Christina Armijo, Attorney at Law) in Las Vegas, New Mexico

1979 to 1981: As part of my private practice, I had a contract with the New Mexico Public Defender Department to handle criminal felony cases in three counties.

1985 to 1992: In addition to my private practice, I had a contract with the New Mexico Children, Youth and Families Department to litigate child abuse cases on behalf of the State.

1994 to 1996: In addition to my private practice, I had a contract with the New Mexico Department of Education to serve as a Due Process Hearing Officer and appeal reviewing officer.

1996 to PRESENT: I have served as a judge on the New Mexico Court of Appeals.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not served in the military.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I graduated *cum laude*, as an undergraduate, through the general honors program at the University of New Mexico in 1972.



In 1996 I was awarded the Trailblazer Award by the New Mexico Commission on the Status of Women.

In 1991 I was given an Outstanding Contribution Award by the State Bar Board of Bar Commissioners for my work on the Women and the Legal Profession Task Force and the Task Force's Final Report.

In 1993 I was recognized by the New Mexico Legislature for my work on the Children's Code Revision Task Force. I participated in rewriting the State's antiquated juvenile justice code, with particular attention to the need to address cases involving violent juvenile offenders.

In 1994 I was recognized by the New Mexico Bar Foundation/Center for Civic Values for ten years of volunteer work with the New Mexico High School Mock Trial Program.

During my office as President of the Fourth Judicial District Bar Association in 1987, the Association was given the Outstanding Local Bar Association Award by the State Bar Board of Bar Commissioners.

Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

State Bar of New Mexico - present  
 First Judicial District Bar Association - present  
 Oliver Seth American Inns of Court - present  
 New Mexico Women's Bar Association - present  
 New Mexico Hispanic Bar Association - present  
 New Mexico Statewide Court Security Team - present  
 Fourth Judicial District Bar Assn. - past- president 1987  
 New Mexico Supreme Court Disciplinary Board - past  
 New Mexico Supreme Court Disciplinary Board Hearing Officer - past  
 NM Supreme Court Board of Legal Specialization - past  
 State Bar Historical Committee - past  
 Children's Code Revision Task Force - past  
 State Bar Task Force on Women and the Legal Profession - past

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Legion Auxiliary  
Music From Angel Fire Advisory Board

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New Mexico Supreme Court: April 26, 1976  
United States District Court, New Mexico: July 15, 1976

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have no publications other than my published opinions as an appellate judge.

I have not delivered any speeches involving constitutional law or legal policy.

Attached are copies of the following reports which represent the work product of committees or task forces on which I have served and to which I contributed:

- (1) FINAL REPORT: Task Force On Women And The Legal Profession;
- (2) STRATEGIC PLAN FOR COURT SECURITY;
- (3) CHILDREN'S CODE, 1993 Revision, New Mexico Statutes Annotated.

13. Health: What is the present state of your health? List the date of your last physical examination.

I consider my health to be very good. My last examination was on June 5, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1996 to PRESENT: I serve as a JUDGE on the NEW MEXICO COURT OF APPEALS. I was appointed in February 1996 by Governor Johnson after my qualifications were screened by the Appellate Judges Nominating Commission. The New Mexico system of selecting judges is a hybrid of appointment/election. As a result, I was required to run a statewide race in the November 1996 general election. At that time, I was elected to a full eight (8) year term of office. The jurisdiction of my Court is statewide civil, criminal and administrative cases.

During my term on the appellate court, I have been invited to sit (by designation) on several cases of the New Mexico Supreme Court.

I have also been designated by the NM Supreme Court (as have my colleagues) to preside in state district (trial) court in civil and criminal cases.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) TEN (10) MOST SIGNIFICANT CASES THAT I HAVE AUTHORED:  
(an additional case is included)

1. Atlixco Coalition v. Maggiore, 1998-NMCA-134, 125 N.M. 786, 965 P.2d 370
2. Tercero v. Roman Catholic Diocese, 1999-NMCA-052, 127 N.M. 294, 980 P.2d 77
3. Ottino v. Ottino, 2001-NMCA-012, <sup>130</sup> N.M. <sup>168</sup>, 21 P.3d 37 *Child Support*
4. Rivera v. Trujillo, 1999-NMCA-129, 128 N.M. 106, 990 P.2d 219 *Tort doctrine - personal injury*
5. State v. Mann, 2000-NMCA-088, 129 N.M. 600, 11 P.3d 564
6. State v. Isaiah A., 1997-NMCA-116, 124 N.M. 237, 947 P.2d 1057
7. Khalsa v. Levinson, 1998-NMCA-110, 125 N.M. 680, 964 P.2d 844
8. City of Albuquerque v. Chavez, 1997-NMCA-034, 123 N.M. 258, 939 P.2d 1066 (DISSENTING OPINION BY JUDGE ARMIJO; REASONING OF DISSENT ADOPTED BY SUPREME COURT UPON REVERSAL OF COURT OF APPEALS IN City of Albuquerque v. Chavez, 1998-NMSC-033, 125 N.M. 809, 965 P.2d 928
9. State v. House, 1998-NMCA-018, 124 N.M. 564, 953 P.2d 737 (DISSENTING OPINION BY JUDGE ARMIJO; REASONING OF DISSENT ADOPTED BY SUPREME COURT UPON REVERSAL IN State v. House, 1999-NMSC-014, 127 N.M. 151, 978 P.2d 967
10. State v. House, 2001-NMCA-011, \_\_\_ N.M. \_\_\_, 25 P.3d 257
11. Las Campanas Limited Partnership v. Pribble, 1997-NMCA-055, 123 N.M. 520, 943 P. 2d 554
12. State v. Cordova 128 N.M. 390, 973 P.2d 1041 *Sexual assault*

(2) REVERSALS:

I am unable to find any cases which I have authored and which were reversed by the New Mexico Supreme Court.

The case of Chavez v. S.E.D. Laboratories, 2000-NMCA-034, 128 N.M. 768,

999 P.2d 412 was affirmed by the Supreme Court as it related to the disposition of all substantive issues except one. The Supreme Court vacated one matter relating to my holding that the plaintiff had waived appellate review of one issue. See: Chavez v. S.E.D. Laboratories, 2000-NMSC-034, 129 N.M. 794, 14 P.3d 532.

(3) *THREE (3) SIGNIFICANT OPINIONS ON FEDERAL OR STATE CONSTITUTIONAL LAW: (I have included an additional case)*

1. State v. Snyder, 1998-NMCA-166, 126 N.M. 168, 967 P.2d 843
  2. Children, Youth & Families Dep't v. Stella P., 1999-NMCA-100, 127 N.M. 699, 986 P.2d 495
  3. Pinnell v. Board of County Comm'rs. of Santa Fe Cty., 1999-NMCA-074, 127 N.M. 452, 982 P. 2d 503
  4. State v. Powers, 1998-NMCA-139, 126 N.M. 114, 967 P.2d 454
16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1980-1981 City of Las Vegas (New Mexico) Personnel Board:  
(dates are approximate) Appointed by Mayor Franken.

1985-1991 Board Member New Mexico Endowment for the Humanities. (dates are approximate) Appointed.

1992-1994 Board Member: New Mexico Health Policy Commission  
Appointed by Governor Bruce King.

I have had no unsuccessful runs for elective public office.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have never clerked for a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I practiced alone from November 1978 until March 1996. My business addresses were as follows:

P.O. Box 1373,  
Las Vegas, New Mexico 87701 and

523 West National Ave.  
Las Vegas, New Mexico 87701.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

New Mexico Department Education  
300 Don Gaspar Santa Fe, New Mexico 87501  
Due process Hearing Officer, *contract*, 1994-1996

New Mexico Children, Youth and Families Department  
2001 Vivigen Way Santa Fe, New Mexico 87505  
Attorney/child abuse litigation, *contract*, 1985-92

New Mexico Public Defender Department  
301 North Guadalupe #101 Santa Fe, New Mexico  
87501  
*contract* attorney felony cases, 1979-81

New Mexico Highlands University  
Las Vegas, New Mexico  
taught business law course one semester approx.  
1980

Sandoval County Legal Services/later known as  
Northern New Mexico Legal Services  
Staff Attorney 1976-78  
The office was located in Bernalillo, New Mexico.  
To the best of my knowledge, neither agency  
presently exists.

Miller and Melton LTD law firm  
Law clerk to Robert Melton 1974-1975  
2701 San Pedro Drive NE  
Albuquerque, New Mexico 87110

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My almost six years as an appellate judge have given me broad experience in all areas of civil, criminal and administrative law. Underlying this experience is the acquisition of substantial administrative and management skills. With the assistance of my staff, I effectively manage a large appellate caseload. Below, I will address in greater detail my professional experience over the course of twenty years of private practice of law.

My experience in private practice is unique. I have represented the small land owner in a simple zoning case as well as clients involved in multi-party-multi attorney litigation. I have defended persons charged with murder and have represented the State in proceedings against parents who committed child abuse.

I began the practice of law in 1976 with a Legal Services funded program in Sandoval County, New Mexico. It was known as SANDOVAL COUNTY LEGAL SERVICES and it later merged and became a part of NORTHERN NEW MEXICO LEGAL SERVICES. My office represented members of the seven Indian Pueblos located in that county: the pueblos of Santa Ana, Sandia, Zia, Jemez, San Felipe, Santo Domingo and Cochiti. My clients also included persons who lived on portions of the Navajo reservation in the northern part of the county. Through this experience and my work on the appellate court, I have gained an insight into the unique and often difficult and complex issues in the area of Tribal/Indian law.

In 1979 I started my own law practice in Las Vegas, New Mexico. Las Vegas is my hometown and is the "first Las Vegas" (having been founded in 1837). I maintained my law office and served clients in north central and northeastern New Mexico until my appointment to the New Mexico Court of Appeals in 1996.

I actively litigated cases in both state and federal courts, and before administrative tribunals.

For approximately three years, from 1979 through 1982, I served as a public defender in three new Mexico counties. Through this work, and my work on the appellate court, I gained considerable experience in criminal law.

In 1983 I directed the focus of my practice to the area of civil litigation and continued in this direction until 1996. I have represented plaintiffs and defendants. I have practiced in the area of personal injury both as plaintiff's counsel and as defense counsel. I prosecuted and defended complex real estate, zoning and quiet title suits, as well as contested probates. My trial practice also included administrative law, employment litigation, worker compensation law and contract law.

In addition to my regular civil practice, from 1985 to 1992 I litigated child abuse cases on behalf of the State of New Mexico in accordance with the provisions of the Children's code. In 1991 my expertise in the area of juvenile justice was recognized when I was asked to serve on the Children's Code Revision Task Force, a committee charged by the legislature with reviewing and ultimately rewriting outdated juvenile justice laws. My work on the task force included attention to the need to strengthen the charging and sentencing options relating to young violent offenders and teenage offenders convicted of serious crimes. In addition to my regular duties on the task force, I co-chaired the sub-committee which rewrote statutes relating to child abuse/neglect proceedings. The Task Force's work product was adopted in its entirety by the New Mexico Legislature and a revised Children's Code was enacted in 1993.

Collectively, my legal and judicial experiences are broad and varied, and they give me the necessary perspectives to be decisive, fair and efficient in the administration of justice. Through these experiences, I believe that I have the capacity to reach to the heart of complex factual and legal matters and apply the law.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical former clients were ranchers and landowners for whom I handled quiet title litigation and provided other real estate representation. I counseled small business owners. For other typical clients, I prepared wills and handled probate matters. I frequently also represented clients as plaintiffs and defendants in personal injury claims, employment matters and contract disputes.



Although I was not formally certified as a specialist in any area, I developed expertise in the areas of real estate quiet title litigation and juvenile justice,

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Throughout my private law practice (1976-1996) I had an active litigation practice. I appeared in court frequently.

2. What percentage of these appearances was in:  
 (a) federal courts: 5%  
 (b) state courts of record: 75%  
 (c) other courts: (administrative) 20%
3. What percentage of your litigation was:  
 (a) civil: 70%  
 (b) criminal: 30%
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried over three hundred (300) cases to verdict or judgment as sole counsel.

I tried approximately forty (40) cases as chief counsel or associate counsel.

5. What percentage of these trials was:  
 (a) jury: 10%  
 (b) non-jury: 90%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;  
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

List of cases follows on next page:

CAPSULE SUMMARY OF SIGNIFICANT LITIGATED CASES

(1)

Fourth Judicial District Court  
County of San MiguelSTATE OF NEW MEXICO v. JANE DOE

Docket No.	JV 81-12
Date:	1981 (Trial Counsel)
Presiding Judge:	Donaldo Martinez
Prosecutor:	Danelle Smith P. O. Box 1811 Las Vegas, New Mexico 87701-1811 (505) 425-9346
Defense Trial Counsel:	M. Christina Armijo
Appellate Citation:	<u>State v. Doe</u> , 97 N.M. 189, 637 P.2d 1244 (Ct. App. 1981)

Summary:

The facts involved a thirteen year old girl who walked away from a mental health facility, to which she had been committed, and murdered a man. I represented her in the court proceedings. The case was significant for several reasons. Most importantly, it was the first case in New Mexico (if not one of the first) which recognized that there did not exist secure facilities to house severely violent, and mentally ill, juveniles. Another significant aspect of the case involved the interplay of the then existing delinquency code and the separate mental health code.

A petition alleging delinquency on the basis of murder and aggravated burglary was filed against the child. Prior to trial on the merits, the court found that the child was not competent to stand trial and ordered that proceedings be initiated for involuntary commitment for mental health treatment. The child was committed pursuant to the mental health code. I sought dismissal of the delinquency charges, *with* prejudice. The State asserted that the dismissal could only be granted *without* prejudice. Two conflicting statutes provided authority for either contention. The trial court dismissed the charges *without* prejudice. That ruling was appealed on behalf of the child by other counsel. The appellate court affirmed the trial court, holding that the procedural rule of dismissal relied upon by the State and adopted by the Supreme Court controlled over the statutory dismissal provision.

(2)

Fourth Judicial District Court  
County of San Miguel

STATE OF NEW MEXICO v. PAUL TURGEON

Docket No.	CR 80-51
Date:	1980 (Trial Counsel)
Presiding Judge:	Garnett R. Burks, Jr.
Prosecutor:	Danelle Smith P. O. Box 1811 Las Vegas, New Mexico 87701-1811 (505) 425-9346
Defense Trial Counsel:	M. Christina Armijo
Appellate Citation:	<u>State v. Turgeon</u> , No. 5470 filed April 13, 1982 (unreported-hard copy attached)

*Summary:*

I represented the defendant who was charged with murder. He was convicted of involuntary manslaughter. At the time of the shooting, defendant was a police officer who responded to a call reporting domestic violence. He was shot by the perpetrator of the domestic violence and he returned fire, killing the perpetrator. An important aspect of the trial was the defendant's tender of testimony from an expert witness who proposed to testify as to the reasonableness of the defendant's conduct during the incident. That issue is discussed in the attached copy of the non-reported opinion. I was not appellate counsel.

(3)

Fourth Judicial District Court  
County of San Miguel

STATE OF NEW MEXICO v. ROSINALDO QUINTANA

Docket No.	CR 80-18
Date:	1980 (Trial Counsel)
Presiding Judge:	Joe Angel
Prosecutor:	(Ret. Judge) Benny Flores 412 Rincon Street Las Vegas, New Mexico 87701 (505) 425-7913
Defense Trial Counsel:	M. Christina Armijo
Appellate Citation:	<u>State v. Quintana</u> , 98 N.M. 17, 644 P.2d 531 (1982)

*Summary:*

I represented defendant who was charged with murder. He was a police officer. The significant issue presented in this case dealt with the admission of evidence purporting to be a "dying declaration".

Approximately three hours before his death, the Victim gave a statement to an attorney hired by his family to pursue litigation against the police officer. The statement was given in a hospital room. Victim provided his version of the events leading up to the shooting incident. He also stated to the attorney that he understood the gravity of his injuries and condition and that there was a strong possibility of his dying. Victim's statement was admitted into evidence at trial, over objection of Defendant, as a "dying declaration".

Defendant was convicted of voluntary manslaughter. An appeal was taken on the issue relating to the admission of Victim's statement. The NM Court of Appeals reversed on this issue; and the New Mexico Supreme Court subsequently reversed the Court of Appeals. This case clarified, in a significant way, the law relating to a "dying declaration". I did not represent defendant on appeal.

(4)

Fourth Judicial District Court  
County of San Miguel

GILBERT GONZALES v. ORHAN M. SANSOY, M.D.

Docket No. 82-80 CV  
Date: 1982

Presiding Judge: Samuel Montoya (deceased)

Plaintiff's Counsel: (Judge) Eugenio S. Mathis  
P. O. Box 1540  
Las Vegas, New Mexico 87701  
(505) 425-7281

Defense Trial Counsel: M. Christina Armijo  
  
(Ret. Judge) Harl Byrd  
P.O. Box 423  
Albuquerque, New Mexico 87103  
(505) 764-0098

Appellate Citations: Gonzales v. Sansoy, 102 N.M. 136, 692 P.2d 522 (1984)  
1984) Gonzales v. Sansoy, 103 N.M. 127, 703 P.2d 904 (Ct. App.

*Summary:*

I, along with co-counsel, represented a physician at trial in a medical malpractice action. The trial work was divided between (Judge) Byrd and me.

Plaintiff alleged that Defendant failed to diagnose and treat acute appendicitis. After trial the jury awarded Plaintiff damages of \$60,000 and punitive damages of \$75,000.

This case is significant because it represented one of the first cases in the state where the jury awarded damages against a physician for gross negligence. The appellate portion of the case clarified the law with respect to this type of award. I did not represent defendant on appeal.

(5)

Fourth Judicial District Court  
County of San Miguel

ANNA GONZALES v. MONTGOMERY WARD

Docket No.	85-245 CV
Date:	1985 (Trial Counsel)
Presiding Judge:	Benny E. Flores
Plaintiff's Counsel:	M. Christina Armijo
Defense Counsel	(Judge) Richard C. Bosson (firm of Bosson and Canepa) P. O. Box 2008 Santa Fe, New Mexico 87504-2008 (505) 827-4906

*Summary:*

This was a significant trial involving a plaintiff who was injured when a store's shelving unit collapsed, causing small appliances to fall upon her neck and back as she walked down an aisle. Evidence established that the shelving units were weak and not designed to withstand the weight of numerous small appliances. The weight of the boxes of appliances caused the shelves to collapse as my client walked down the aisle. The matter was extensively litigated as to the issues of fault and extent of injuries. The matter was settled during jury deliberations.

(6)

Fourth Judicial District Court  
County of San Miguel

EDDIE BACA & MARY BACA v. JULIA ESPINOZA, et als.

Docket No.	86-62 CV
Date:	1986 (Trial Counsel)
Presiding Judge:	Art Encinias
Plaintiffs' Counsel:	M. Christina Armijo
Defense Counsel:	Charlotte H. Hetherington 1701 Old Pecos Trail Santa Fe, New Mexico 87502-4160 (505) 988-4476

*Summary:*

This case involved litigation to quiet title to a significant tract of land in rural New Mexico. I initiated the litigation on behalf of the plaintiffs. A defendant appeared and challenged the claim of title. The defendant, an adjoining landowner, was represented by a title company which had, some years prior, issued to him a policy of title insurance. The defendant's claim of title was based upon an old judgment quieting title in his predecessor's favor. I was successful in challenging the validity of the old decree. The case was then litigated based upon evidence developed through the chain of title and expert witnesses. The matter settled after extensive discovery and negotiation.



(7)

Fourth Judicial District Court  
County of San Miguel

MARY YARGER v. CITY OF LAS VEGAS, et als.

Docket No.	87-453 CV
Date:	1987 (Trial Counsel)
Presiding Judge:	Either Jay G. Harris or Benny E. Flores
Defense Counsel:	Carol J. Ritchie 911 Old Pecos Trail Santa Fe, New Mexico 87501 (505) 988-4483
Plaintiff's Counsel:	M. Christina Armijo

*Summary:*

I represented a plaintiff who was injured on a city sidewalk. She tripped on a metal plate that had become dislodged from the surface of the walkway. The significance of this litigation was developing evidence as to who bore responsibility for the sidewalk. This case presented an interesting challenge to me as an attorney. The facts were interesting: The metal plate was part of a drainage system connected underneath the sidewalk to the adjoining building, an abandoned grocery store. The building was owned by one party, but was leased by Safeway Stores (even though the store was closed). The street which abutted the sidewalk was within the City of Las Vegas. The City admitted to maintaining portions, but not all of the street and sidewalk. The City placed the blame and responsibility upon the State of New Mexico which had an old highway right of way along that street. I am only able to recall one of the attorneys. I do not recall all of them. The case settled after extensive discovery and negotiation.

(8)

Fourth Judicial District Court  
County of San Miguel

MAX & MARY ALIREZ v. GEORGE LYSTER, et al.

Docket No.	89-197 CV
Date:	1989 (Trial Counsel)
Presiding Judge:	Nicolas T. Leger
Plaintiffs' Counsel:	M. Christina Armijo
Co-Counsel:	Elliot Weinreb 214 McKenzie Street Santa Fe, New Mexico 87501-1831 (505) 983-2414
Defense Counsel:	Bonnie M. Stepleton P. O. Box 724 Sandia Park, New Mexico 87047-0724 (505) 281-7090

*Summary:*

I and co-counsel represented an elderly couple who were injured when the automobile they were in was rear-ended on the interstate by an eighteen wheeler. The case was significant because of the disputed liability and damages issues. Experts disagreed as to whether the plaintiffs were negligent to some degree with respect to the speed of their automobile. The matter was extensively litigated prior to trial. A jury returned a verdict in favor of the plaintiffs.

(9)

Fourth Judicial District Court  
County of San Miguel

STATE OF NEW MEXICO ex rel. HUMAN SERVICES DEPARTMENT v. NANCY F.

Docket No.	91-40 CV
Date:	1991 (Trial Counsel)
Presiding Judge:	Jay G. Harris
State's Counsel:	M. Christina Armijo
Defense Counsel:	Rawson (surname) (Unable to recall her first name. The directory of New Mexico attorneys does not list her as active or inactive.)

*Summary:*

I represented the State of New Mexico in a child abuse case filed against mother, Nancy F. Mother had previously murdered her two young children. In the subsequent criminal proceeding, she entered a plea of "guilty but mentally ill" to two counts of murder and was committed for treatment to an in-patient mental health facility.

While in that facility she became pregnant and delivered an infant. The State removed the infant from her care upon delivery and I filed a child abuse action against Mother.

The case was significant because of the need to address "abuse" in the context of Mother's mental illness and her predictable danger to a child she had not yet harmed or endangered. The case was also significant because Mother's treating mental health professionals testified that she was no longer mentally ill and was fully capable of assuming a parent-child relationship with the infant. The State's expert witnesses concluded otherwise. The trial involved significant scientific evidence provided by several expert witnesses. The judge ruled in the State's favor. Mother's parental rights were eventually terminated.

(10)

Fourth Judicial District Court  
County of San Miguel

STEVE SANCHEZ v. CARL CLAYTON AND SERVICEMASTER

Docket No. 90-144 CV  
Date: 1990 (Trial Counsel)

Presiding Judge: Art Encinias

Plaintiffs' Counsel: James A. Burke  
P. O. Box 9332  
Santa Fe, New Mexico 87504-9332  
(505) 988-4657

Defense Counsel: M. Christina Armijo  
  
Lawrence Di Nardo  
Seyfarth, Shaw, Fairweather and Geraldson  
Chicago, Illinois

Appellate Citation: Sanchez et al. v. Clayton et al., 117 N.M. 761, 877 P.2d 567  
(1994)

*Summary:*

I along with co-counsel DiNardo represented defendant both at trial and in extensive pre-trial proceedings and on the Supreme Court appeal that preceded trial.

Plaintiffs were former university employees who had previously filed, in U.S. District Court, a wrongful discharge suit alleging civil conspiracy, tortuous interference with employment contract and breach of contract. Plaintiffs were awarded substantial damages in the federal court action and settled during the pendency of the appeal. They then filed in state court an action identical to the first, naming new defendants, but based upon the same evidence tendered in the federal court action. The legal issues in the state court case was addressed in the appeal and Supreme Court opinion cited above. Those issues included the effect of the federal court settlement on the state case and Plaintiffs' quest for punitive damages.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Additional activities are addressed below:

While serving on the appellate court 1996-2001), I headed a task force which conducted a courthouse security needs assessment for all courthouses in New Mexico. As a result of the committee's work, a formal New Mexico Statewide Court Security Assessment and Strategic Plan was completed. Actions are underway to implement the plan.

From 1990 to 1995 I served as a member of the Supreme Court Disciplinary Board. This Committee is an arm of the New Mexico Supreme Court and is charged with implementing and enforcing rules addressing attorney ethical conduct.

I was member of the Supreme Court Board of Legal Specialization. This Committee was charged with establishing standards for attorney specialization in various fields of law.

From 1989 to 1996 I served as a member of the Appellate Judges Nominating Commission. In this regard I interviewed applicants for appellate vacancies and screened their qualifications and credentials. The names of the most qualified applicants were sent to the governor for appointment.

For approximately seven years while in private practice, I represented, on contract, the State of New Mexico in matters where a parent was alleged to have abused his or her child. Throughout all of the litigation which I directed, I gained considerable expertise in the area of juvenile justice.

As a member of the Children's Code Revision Task Force, I participated in rewriting out-dated if not antiquated juvenile justice statutes. The changes made to the statute were significant; they recognized societal changes in the areas of juvenile crime and delinquency and child abuse.

While in private practice, I was a member of the State Bar Task Force on Women and the Legal Profession. The work of this task force sought to explore the area of gender equity in the courts and legal process. The final report of the task force was comprehensive and was approved by the Board of Bar Commissioners.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.
  - a) I am owed attorney fees for work that I performed for a client prior to my appointment to the court in 1996. I anticipate the fee to be paid in monthly installments.
  - b) I am vested in the State of New Mexico Public Employees Judicial Retirement Plan. At age 64 I will be eligible to draw a pension and I plan to do so at that time.
  - c) I currently participate in the State of New Mexico Deferred Compensation Plan. I have a number of mutual funds. I plan to keep the plan and derive income from it at a later date.
2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Response:

I will treat every person alike, regardless of wealth, ethnicity or gender. Because I have been a sitting judge for five years, I anticipate few situations which will present a conflict of interest. However, I intend that my conduct be guided by common sense and by the Guide to Judicial Policies and Procedures/Code of Conduct for Judge and Judicial Employees. I will seek the guidance and counsel of my chief judge if a situation arises in which I have doubt.

As a practical matter, I presently recognize circumstances which will create a conflict of interest and which will require recusal: (1) I have several blood relatives and relatives by marriage who practice law in New Mexico. I will not sit on any case where a relative is counsel. (2) As a sitting appellate judge, I am aware of numerous cases which

have moved from the New Mexico courts to federal court, in accordance with the terms contained in an opinion. I believe that it would be inappropriate to sit on any of those cases which were pending during my service on the New Mexico Court of Appeals, even if I did not sit on the panel.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

2000: During this year I received \$71,294 in wages from the State of New Mexico on account of my work as an appellate judge. This amount is taken from my W-2 form.

Also in Year 2000 I received the sum of \$5,620 representing a fee for legal services rendered to a former client prior to my appointment to the bench in 1996.

2001: As of August 3, 2001, I have received \$53,283 in wages from the State of New Mexico on account of my work as an appellate judge.

Also in Year 2001 I have received the sum of \$2,884 representing a fee for legal services rendered to a former client prior to my appointment to the bench in 1996.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

PLEASE SEE ATTACHED NET WORTH STATEMENT

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1996 I was a candidate for statewide office: New Mexico Court of Appeals. I ran in the State primary election, unopposed, in June, 1996; and I ran, opposed, in the General election, November, 1996.



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks			Notes payable to banks-secured		
\$3,500			NONE		
U.S. Government securities-add schedule:			Notes payable to banks-unsecured		
NONE			NONE		
Listed securities-add schedule			Notes payable to relatives:		
			NONE		
Unlisted securities--add schedule			Notes payable to others:		
			NONE		
Accounts and notes receivable:			Accounts and bills due		
The approximate sum of \$7,000 is due for legal services provided to a client prior to 1996.			MBNA Mastercard: \$8,364		
			Bank of America MasCard: \$5,841		
			ATT Universal MasCard: \$4,620		
			Del Norte Credit U.Visa: \$6,956		
			The Home Depot: \$1,400		
			Del Norte Credit Union for purchase of Toyota \$2,812		
Due from relatives and friends:			Unpaid income tax:		
NONE			There are no unpaid income taxes. All returns have been timely filed.		
Due from others: See above regarding attorney fee due.			Other unpaid income and interest:		
			NONE		

Doubtful:	NONE			Real estate mortgages payable-add schedule			
				Bank of Las Vegas on account of second residence located in Las Vegas, New Mexico	\$77,423		
				Bank of Las Vegas on account of 25 acres located in Mora County, New Mexico:	\$8,811		
				Chase Mortgage on account of primary residence located in Santa Fe, New Mexico:	\$135,418		
Real estate owned-add schedule				Chattel mortgages and other liens payable	NONE		
Primary Residence located in Santa Fe, New Mexico:	\$170,000						
Second residence located in Las Vegas, New Mexico:	\$125,000						
25 acres of unimproved land located in Mora County, New Mexico:	\$100,000						
Undivided interest in 33 unimproved acres located in San Miguel County, New Mexico:	\$14,000						
Real estate mortgages receivable:	NONE			Other debts-itemize:	NONE		
Autos and other personal property:							
1999 Toyota	\$16,000						
1979 Mercury	\$ 100						
Household furnishings	\$30,000						
Cash value-life insurance:	\$0						
Other assets itemize:							
State of New Mexico Deferred Compensation Plan-administered by AETNA Financial Services Mutual Funds (as of 8-22-01)	\$28,900						
				Total liabilities:	\$251,645		
				Net Worth:	\$242,855		

Total Assets:	\$494,500			Total liabilities and net worth:	\$494,500		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor:	NONE			Are any assets pledged? (Add schedule) NOT AS OTHERWISE DISCLOSED ABOVE			
On leases or contracts:	NONE			Are you defendant in any suits or legal actions?	NO		
Legal Claims:	NONE			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax:	NONE						
Other special debt:	NONE						

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

RESPONSE:

- a) For the past nineteen (19) years (1982 to 2001), I have been a volunteer with the High School Mock Trial Program sponsored by the Center for Civic Values. This is a wonderful program where students from throughout New Mexico - from the smallest schools and poorest districts to the largest schools and wealthy districts - can compete on a level playing field and learn how government and courts work. Many of the participating students come from modest if not extremely disadvantaged backgrounds. The experience of the Mock Trial Program has made significant positive differences in the lives of many of these young citizens.
- b) For the past five years (1996-2001) I, along with members of my Court, have traveled to southeast New Mexico once per year and participated in Law Day activities sponsored by local bar associations. These activities include meeting with and speaking to high school students. Some of the high schools are "alternative" high schools.
- c) While in private practice, for approximately twelve (12) years, I provided pro bono legal services to senior citizens through the State Bar Lawyer Referral for the Elderly Program. The services ranged from simple wills and powers of attorney to complex quiet title litigation that resulted in clearing title to their property. Also, outside of this program, I also provided pro bono services (wills and durable powers of attorney) for senior citizens. Over the years, I handled close to one hundred of these various types of cases.
- d) While in private practice, I provided pro bono legal services to Habitat for Humanity. In this regard, I filed quiet title suits on several properties in order to clear the title. The litigation was successful and, as a result, homes were built thereon for families in need.

- e) I consider my work as a member of the New Mexico Health Policy Commission to have served the interests of the disadvantaged, especially the children of New Mexico.
- f) In approximately 1980 I was a founding member of the Big Brothers/Big Sisters Program in my community. I served on the Board for approximately two years.
- 2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?  
  
I belong to the American Legion Auxiliary. I recently learned that the organization may allow only women (wives, daughters, sisters of service personnel) to hold membership. I have not previously belonged to any organization that discriminates.
- 3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no formal selection system in place in New Mexico for federal judicial appointments. I tendered an application to Senator Pete V. Domenici, the senior United States Senator for New Mexico. Senator Domenici and his staff screened the applicants in accordance with procedures he put into place. This process included his or his staff contacting references. My credentials were carefully reviewed and examined and I was interviewed by Senator Domenici and members of his staff.

After Senator Domenici recommended me (along with others) to the President, I participated in an extensive evaluation of my personal background and professional qualifications conducted by the White House Counsel's office. I was interviewed by deputy White House Counsel and by Justice Alberto Gonzales, the President's Counsel.

I then underwent an extensive FBI background check, as well as an investigation conducted by the Department of Justice.

I was nominated on August 2, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

NO.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

RESPONSE:

The judiciary is but one of three branches of government. Courts should not place themselves in a position to be a substitute for the legislative or executive branches of government. In this regard, however, I also recognize that litigation may in some cases be the only alternative where a state has failed to adhere to what the Constitution or the law requires.

As an appellate judge on a state intermediate appellate court, I view my role as "error correcting". I have not served as a jurist in the federal system. However, I recognize that the powers of a federal trial judge are significant and they expand with every new statute or regulation enacted by Congress. Despite these broad powers, a trial judge's power is not unlimited; he or she must act with restraint. Whenever possible, cases should be decided on the narrow grounds which attend to the particular facts and circumstances of the immediate case. A judge must adhere to precedent.

I believe that a jurist should interpret the law and not make it. At the same time, I recognize that there is sometimes a lack of precedent for cases presented by new or novel issues, statutes and regulations. Where there is no direct precedent, a judge should look to analogous situations and try to draw from these a solution that most closely follows what the law has been in his or her jurisdiction. A judge should resist the temptation to second-guess what the legislature intended.

Senator SCHUMER. Thank you, Judge Armijo.  
Ms. Bowdre?

**STATEMENT OF KARON O. BOWDRE, NOMINEE TO BE  
DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA**

Ms. BOWDRE. As everyone else, I want to thank you again for holding this hearing under these adverse circumstances. I think it is very important that the business of Government go on, and thank you for having this hearing.

I also want to thank Senator Shelby for speaking on my behalf, and for Senator Sessions who could not be here, but has been so supportive during this whole process.

And I must thank my husband, who is here with me, Birch Bowdre, who has lent his support throughout this, and my sons, Beau and Barrett, who were very upset about missing school to be here.

[The biographical information of Ms. Bowdre follows.]



I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Karon Owen Bowdre  
nee Karon Lynn Owen

2. Address: List current place of residence and office address(es).

Residence: Birmingham, AL 35243

Office: Cumberland School of Law  
Samford University  
800 Lakeshore Dr.  
Birmingham, AL 35229

3. Date and place of birth.

April 25, 1955  
Montgomery, Alabama

4. Marital status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married since 1979 to J. Birch Bowdre, Jr., attorney/partner  
Wallace, Jordan, Ratliff & Brandt  
Suite 400  
800 Shades Crest Drive  
Birmingham, AL 35209.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Law School: Cumberland School of Law  
Samford University  
Birmingham, Alabama 35229  
J.D., cum laude  
August 1977 - December 1980  
Degree awarded May 1981

Undergraduate: Samford University  
Birmingham, Alabama 35229  
B.A., cum laude  
August 1973 - January 1977  
Degree awarded May 1977

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment:

- 8/90 - present Cumberland School of Law (professor)
- 6/82 - 8/90 Rives & Peterson  
(Current name Christian & Small)  
Of Counsel (1989-90); Partner(1987-89); Associate (1982-86)
- 3/81 - 5/82 Hon. J. Foy Guin, Jr.  
United States District Court Northern District of Alabama  
Federal Judicial Law Clerk
- 5/80 - 1/81 Lorant, Harris & Yearout (law clerk)  
No longer in existence
- 6/79 - 8/79 Dunn, Porterfield, Scholl & Clark (law clerk)  
(Current name: Porterfield, Harper & Mills)
- 5/78 - 5/79 Lange, Simpson, Robinson & Somerville (law clerk)  
& 9/79 - 5/80
- 6/77 - 8/77 Child Labor Division (summer clerk)  
Alabama Department of Industrial Relations
- 1/77 - 5/77 Alabama State Senate Office (legislative session clerk)

Director:

- 10/93 - 10/99 Christian Legal Society, Board of Directors  
Chair, Law Student Ministries Committee (1996-1997, 1998 -1999),  
Committee member (1996- )
- 7/91 - present Christian Legal Society of Alabama  
(President, 1999- , 1992-93, State Membership Director 1991-1995, Board of  
Directors 1995- present)
- 1994 - present Brigham Williams Realtors, Board of Directors
- 1998 - 2001 Magnolia Ridge Homeowners Association, Board of Directors
- 2001 - present CenterStage Productions  
Founder and Board of Directors (non-profit theater production company)

Part Owner: Hwy 280 LLC (partial interest in commercial rental property)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Central Bank (now Compass Bank ) Young Executive Board (chairman, 1988 -90)  
 "Top 40 Under 40," Birmingham Business Journal (1990).  
 Who's Who in American Law; Who's Who in American Women.

Law School Honors:

Cumberland Law Review, Associate Editor;  
 Henry Upson Sims Moot Court Board, Associate Justice;  
 Order of the Barrister; Dean's List;  
American Jurisprudence Book Awards in Constitutional Law  
 and Evidence; Book Award in Juvenile Justice;  
Curia Honoris honorary

Undergraduate Honors:

Omicron Delta Kappa; Hypatia (women's honorary);  
 Sigma Tau Delta (English honorary); Pi Gamma Mu (social sciences honorary);  
 Student Government Association (vice-president, senator, homecoming chairman);  
 Residence Hall Judiciary (chief justice); Zeta Tau Alpha (vice-president).

9. Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Alabama Bar Association: Insurance Programs Committee (approximately 1983-1989), Ethics Education Committee (approximately 1990-1991), Women's Section (2001- ).

Birmingham Bar Association: Grievance Committee (2000, 2001); Women's Section (1999 - present); Continuing Legal Education Committee (1997); Membership Committee (1997, 1998); Professional Ethics (1991); Unauthorized Practice of Law ( 1989); Scholarship Committee (1984 - 1987; chair, 1985).

American Bar Association: Torts and Insurance Practice Section (approx. 1984 - 1995); Section of Legal Education and Admissions to the Bar (1990 - present).

Legal Writing Institute (1991- present).

American Immigration Lawyers Association (1986 -1998).

Alabama Defense Lawyers Association (1982 - approx. 1995) Amicus Curia Brief Committee (approx. 1983 - '86).

10. Other memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Christian Legal Society; Christian Legal Society of Alabama; Legal Writing Institute; Association of Legal Writing Directors; Susan G. Komen Foundation; Dawson Memorial Baptist Church; American Saddlebred Horse Association; American Saddlebred Horse Association of Alabama; American Horse Show Association.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court admitted September 18, 1987

Alabama admitted April 28, 1981

Federal District Courts of Alabama (admitted to the Northern District June 2, 1982; admission dates in other districts no longer available; "inactive" in Northern District and admission in other districts lapsed after 1990 when courts began a readmission policy and I no longer actively practiced)

Eleventh Circuit Court of Appeals (admission date no longer available; admission lapsed after 1990 when I no longer actively practiced law).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**Publications**

Enhanced Obligation of Good Faith: A Mine Field of Unanswered Questions after *L & S Roofing Co.*, 50 Ala. L. Rev. 755 (1999).

"Litigation Insurance": Consequences of an Insurance Company's Wrongful Refusal to Defend, 44 Drake Law Review 743 (1996), reprinted in Insurance Law Review (1998).

Law Practice: A Place for Moral Values, 57 Ala. Law. 158 (1996) (selected by Judge Frank M. Hull for distribution to judges and attorneys attending the Eleventh Circuit Judicial Conference, May 2, 1997, as part of a program on "Professionalism").

Conflicts of Interest Between Insurer and Insured: Ethical Traps for the Unsuspecting Defense Counsel, 17 Am. J. Trial Ad. 101 (1993).

Guaranty Association Law in Alabama, 20 Cumb. L. Rev. 321 (1990).

"Immigration Law: What You Don't Know Can Hurt You - and Your Client," 50 Ala. Law. 234 (1989).

Student Note, FCC v. National Citizens Committee for Broadcasting: A Closer Step to Complete Media Regulation, 9 Cumb. L. Rev. 851 (1979).

Regional Editor, NCIGF Annotated Model Insurance Guaranty Act (1988-94)(distributed by the National Association of Insurance Guaranty Funds, updated annually).

**Presentations** Numerous Continuing Legal Education and other presentations including:

"Recent Developments in Insurance Law," Alabama Defense Lawyers Association Summer Meeting, June 23, 2000; and Cumberland CLE By the Hour, December 28, 2000.

"Enhanced Obligation of Good Faith: Unanswered Questions After L&S Roofing," Cumberland CLE Program: Developments and Trends in Fraud and Bad Faith Litigation, February 27, 1998.

"Professional Responsibility: Conflicts Issues in Representing the Insured and Insurance Companies," Cumberland CLE by the Hour, December 30, 1997.

"Responding to Law Suits Alleging Covered and Non-Covered Claims: The Ethical Obligations of Each Party," Cumberland CLE Program: Insurance Law: An Update on Traditional Issues and a Look at Emerging Questions and Theories, September 19, 1997.

"Moral Values in Law Practice," Cumberland CLE program: CLE by the Hour, December 1996.

"Law Practice: A Place for Moral Values?" keynote speaker, Christian Legal Society National Student Leadership Conference, October 1996.

"Using Extended Orientation to Introduce Legal Method and Legal Research," 1996 Legal Writing Institute, Tacoma, Washington.

"Workshop on Effective Opinion Writing," Mississippi Court of Appeals, law clerks and staff attorneys, November, 1995, and again September, 1996.

"Duties of the Insurer and Defense Counsel in Complex Situations," Cumberland CLE Program: Litigating Insurance Coverage Issues, October 7, 1994.

"Conflicts in Representing Insurance Companies," Cumberland CLE Professionalism Program, several live and videotaped presentations, fall 1992.

"Ethical Considerations -- Duty to Defend; Reservation of Rights; Conflict of Interests and Related Problems," Cumberland CLE Insurance Program (program co-chairperson) January 17, 1992.

"Conflicts of Interest under the New Rules of Professional Conduct," ABICLE Professionalism Program, several presentations fall 1991.

"Persuasive Writing Workshop," Cumberland CLE Appellate Advocacy Program, January 18, 1991.

"Guaranty Association Law," Cumberland CLE Insurance Program, November 18, 1988.

13. Health: What is the present state of your health? List the date of your last physical examination.

My current state of health is good. My last physical examination was June 5, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide:

- (1) citations for the ten most significant opinions you have written;
- (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and
- (3) citations for significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Federal Judicial Law Clerk  
Hon. J. Foy Guin, Jr.  
United States District Court  
Northern District of Alabama  
March 1981 - May 1982

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Rives & Peterson  
(Current name Christian & Small)  
1700 Financial Center  
505 North 20th Street  
Birmingham, Alabama 35203  
Of Counsel (1989-90); Partner(1987-89); Associate (1982 - 86)

Cumberland School of Law  
Samford University  
800 Lakeshore Drive  
Birmingham, AL 35229  
Adjunct Professor (1989-90); director of Legal Research and Writing (1990-2001); Assistant Professor (1990-94); Associate Professor (1994-99); tenure granted 1996; Professor (1999 -present)

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From the beginning of my practice in 1982 until 1990, I was involved in various aspects of litigation. The bulk of my practice remained insurance defense work. The exact complexion of the character shifted from the automobile cases to the more complex coverage disputes and bad faith and fraud cases. Insurance defense also involved product liability cases, medical malpractice cases, as well as some arson cases.

In addition to insurance defense litigation, I served as general counsel for the Alabama Insurance Guaranty Association from 1982 until 1990. In that capacity, I handled insurance coverage

matters, including interpretations of the Guaranty Association Act; supervised the handling of cases by other attorneys in Alabama and elsewhere; and provided legal advice on a range of matters.

Beginning around 1985, I developed a small practice in immigration law .

By 1986, my practice had evolved into complex coverage dispute/bad faith cases, which were often resolved by summary judgment; writing trial and appellate briefs for other attorneys; representation of two guaranty association clients; and immigration. These areas of law gave me greater control over my time and schedule than did the higher volume of automobile and products liability cases of the earlier years of my practice.

In August of 1989, I was asked to teach insurance law as an adjunct professor at Cumberland School of Law of Samford University. Seeing an opportunity for a possible career change that would give me more flexibility and opportunity to be with my two sons, I resigned from the partnership and became "of counsel" to the firm. In December 1989, I was offered the full-time position of Director of Legal Research and Writing of Cumberland, which I began in August of 1990. Since 1989, I have taught insurance law at least once every academic year. From 1990 until May 2001, I served as director of the legal research and writing program. One hallmark of that program was an effort to make the assignments as much like the real practice of law as possible. To that end, students had to comply with "court rules," such as deadlines and format requirements, and had to use the Eleventh Circuit Rules of Appellate Procedure when writing their briefs.

I have also taught the required professional responsibility course several times and developed an advanced seminar on professionalism. Another seminar I developed and taught frequently was an advanced procedure seminar. The course examined key procedural rules in civil trial and appellate practice and required the students to employ those rules in creating a complete record on appeal, which was then used in Moot Court. This past year, I also taught the basic torts class.

While teaching, I have maintained my involvement with law practice through serving as an expert witness in numerous insurance cases. Most of these cases involved issues of conflicts of interest and/or bad faith. I have worked on cases for both the insured and the insurance company.

c. Areas of practice:

Insurance defense. My practice began with subrogation claims in district (non-jury) court and primarily involved automobile accident claims. I also assisted senior partners with products liability cases, medical malpractice cases, and more complex automobile accident cases. My practice evolved into more of an emphasis on insurance disputes, such as coverage questions, fraud and bad faith claims. The number of cases I tried decreased with the increase in complexity of the cases. By the time I left the firm in 1990, I was primarily involved with the defense of bad faith cases and coverage disputes.



Federal Court. Because I had served as a law clerk in federal court, and felt comfortable there, I worked on almost every case that our firm had in federal court. Those cases included a complex civil RICO case, which I handled virtually on my own; an antitrust case; a plaintiff's age discrimination case; a plaintiff's sex discrimination case; several race discrimination cases around the country in which we defended different railroad unions; other employment discrimination cases; as well as numerous insurance disputes, and other diversity jurisdiction cases.

Immigration. In 1985, I became interested in immigration law after hearing the stories of several people in the international Bible study that my husband and I led. I began working pro bono on immigration matters for some of them, and convinced the firm to let me try to develop that area of practice for the firm. Most of my clients were individuals, whom I represented for free or minimal fees. I received numerous referrals from the University of Alabama in Birmingham to assist foreign students and visiting scholars.

Appellate practice. Early in my tenure with the firm, several partners recognized my writing and analysis skills. As a result, I soon became the appellate lawyer, writing appellate briefs for many of the partners. I also handled a significant number of summary judgment briefs for other lawyers, as well. My own practice for the Guaranty Association and with insurance coverage disputes involved many trial and appellate briefs. By the time I left the firm, probably 30 % of my work involved writing trial or appellate briefs.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My areas of specialization would probably be considered as insurance coverage matters, fraud and bad faith, and brief writing. My clients included State Farm, Nationwide, Aetna, Allstate, Massachusetts Indemnity Life Insurance Company. My personal largest single client was the Alabama Insurance Guaranty Association, for which I served as general counsel from 1982 until I began teaching in 1990. I also represented the Alabama Health Maintenance Organization Guaranty Association beginning in 1987; my representation primarily involved working with the Insurance Department to create regulations for that organization.

- d. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently. I averaged a case load of between approximately 70 and 120 files, 90% of which were litigation related cases. The number of cases that I actually tried decreased as the complexity of the cases in which I was involved increased. As I became more involved with insurance bad faith cases, with potentially unlimited exposure to punitive damages, the size of my caseload shrunk, and I was most frequently in court on motion hearings. After 1986, my focus at that point became more on coverage disputes that frequently were resolved on summary judgment, handling Guaranty Association matters, and writing trial and appellate briefs. I continued to handle litigation cases, but they were generally larger cases that took longer in

preparation, and were most often resolved either by summary judgment or settlement because of the potential exposure.

2. What percentage of these appearances was in:
  - (a) federal courts;  
Approximately 35%
  - (b) state courts of record;  
Approximately 65%
  - (c) other courts.  
0%
3. What percentage of your litigation was:
  - (a) civil;  
100%
  - (b) criminal.  
0%
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In an insurance defense practice, a good lawyer quickly learns to seek summary judgment on legal issues in the case; if summary judgment is not granted, the best course of action usually is to settle the case, if that can be done reasonably. Taking a claim against an insurance company for bad faith or fraud to a jury presents substantial danger for a large verdict. This danger was particularly present in Alabama in the 1980's when little control existed over large punitive damage awards. Therefore, a substantial number of the cases in which I was involved were resolved by summary judgment or were settled.

I have done the best I can to gather information with which to accurately answer this question. The firm of which I was a member dissolved in 2000, and no records exist from the 1980's. I obtained some information from the Alabama Office of Courts, the Jefferson County Courts, and the Federal District Court for the Northern District of Alabama, but the computer records only date back to the late 1980's, and my heaviest case load predates those records. I have spoken with a former secretary and former partners in efforts to recall specific cases. From these efforts, I am afraid that I can only give an estimate as to the number of cases I actually tried to a verdict or judgment. My best guess is at least fifteen jury trials and at least eighty non-jury trials.

5. What percentage of these trials was:
  - (a) jury;  
  
approximately 15%

(b) non-jury.

approximately 85%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;
  - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
  - (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As stated previously, I have tried diligently to reconstruct some records about cases I handled but with little success. Listed below is information about some of the cases that I can remember and about which I have been able to pull some information. Most of the cases are ones involving appeals because information concerning those cases was easier to obtain. The cases listed below all were ones in which I had substantial involvement in the trial court prior to the appeal.

1. State Farm Mutual Automobile Insurance Co. v. Bowers

- a. Approximately 1983 - 1984
  - b. Jefferson County Circuit Court; either Judge Jack Carl or Judge Marvin Cherner
  - c. Co-counsel: Edgar M. Elliott, 7 Baltursol (Shoal Creek), Birmingham, AL 35242; phone (205) 991-9441.
- Opposing counsel: Izas Bahakel, 2131 12th Avenue North, Birmingham, AL 35234; phone (205) 328-9796.

I filed this interpleader action on behalf of State Farm at a time when the tort of bad faith failure to pay was in its infancy in Alabama. The case arose out of an uninsured motorist claim where the damages sustained by the insured driver and his four passengers exceeded the available coverage. The named insured and one of the passengers counterclaimed for bad faith. They claimed that State Farm's delay in making payment constituted a denial of the claim, one of the requirements of the tort action, and that the filing of the interpleader itself evidenced bad faith. The trial court granted our motion for summary judgment and the Alabama Supreme Court affirmed. The Court clarified that the insurance company had a right to delay payment while the liability of the uninsured motorist was determined, and that the initial partial payment of the claims and filing of an interpleader reflected the good faith of the insurer when faced with conflicting claims. The Supreme Court decision is reported as Bowers v. State Farm Mut. Auto. Ins. Co., 460 So. 1288 (Ala. 1984).

My role in the case included drafting all pleadings, writing the brief and arguing the

motion for summary, and writing the appellate brief (I do not believe the Court heard oral argument on this case). My work was supervised by Edgar Elliott.

2. Alabama Hospital Association Trust v. Mutual Assurance Society of Alabama

- a. Approximately 1988 - 1989
  - b. Jefferson County Circuit Court, Judge Marvin Cherner
  - c. Co-counsel: Tom Christian, 1700 Financial Center, 505 20th St. N., Birmingham, AL 35203, phone (205) 795-6588.
- Opposing Counsel: Mike Wright, 100 Brookwood Place, 7th Floor, Birmingham, AL 35259, phone (205) 868-6082.

This case arose from a dispute between two insurance companies over which one had primary coverage for doctors and nurses alleged to have committed medical malpractice. We represented Mutual Assurance, the carrier for the doctors. The insurance trust for the hospital, AHAT, paid the underlying judgment against the hospital after the staff personnel covered by MASA had been dismissed. AHAT then sued MASA seeking reimbursement and claiming that the liability of the hospital arose solely from its vicarious liability for the actions of the MASA insureds. To prove its case, AHAT offered affidavits from some of the jurors. The case was submitted to the circuit court judge on AHAT's motion for partial summary judgment, and MASA's motion for summary judgment. The court granted MASA's motion, and that decision was affirmed on appeal. Alabama Hosp. Assoc. Trust v. Mutual Assurance Socy. of Ala., 538 So. 2d 1209 (Ala. 1989). The significance of the case is its clarification of the burden on one trying to establish the existence of coverage when facts relevant to the coverage dispute were litigated but not clearly established in the liability case.

My involvement with the case included handling discovery, investigation, and the preparation of and arguing of the summary judgment, as well as the writing brief on appeal. My work was supervised by Tom Christian.

3. Tilley v. Carnival Cruise Lines

- a) Approximately between 1985 - 1987.
  - b) Federal District Court, Middle District of Alabama, Judge Truman Hobbs
  - c) Co- counsel Duncan Manley, 1700 Financial Center, 505 20th St. N., Birmingham, AL 35203, phone (205) 795-6588; Robert Black, Sr., 4255 S. Perry St., Montgomery, AL 36101, phone (334) 834-7600.
- Opposing counsel: J. Michael Manasco, Suite One, 407 S. McDonough St., Montgomery, AL 36104; James Sasser, 350 Locust St., Gadsden, AL 35901, phone (256) 547-0023.

This case involved a claim of misrepresentation by a cruise line as to the accessibility for handicapped individuals of a new cruise ship. The case predated the Americans with Disabilities Act, and the modifications to the cruise ship were made in an effort to make cruising accessible for those who had been unable to take such vacations. The plaintiff was confined to a wheel chair, and claimed that her enjoyment was ruined because of structural barriers, such as lips around the shower and at weather-exposed areas on deck that were designed to keep interior areas dry.

I was one member of the defense team for Carnival Cruise Lines. My role in the case

involved all of the pretrial preparation, including filming a similarly challenged individual maneuvering around the ship, as well as trial examination of key witnesses, and opening statement. The jury returned a verdict for the plaintiff well below the plaintiff's settlement demand and our offer. The case taught me the value of proper preparation and that victory for a defense attorney can be counted when the jury returns less money than the plaintiff left on the table! The case also made me significantly more aware of the daily challenges faced by those with disabilities.

4. Hunt v. American Bank

- a) Approximately August 1982 - May 1986
- b) Federal District Court, Northern District of Alabama, Judge James H. Hancock.
- c) Co-counsel Clarence Small, 1700 Financial Center, 505 20th St. N., Birmingham, AL 35203, phone (205) 795-6588.

Counsel for co-defendant: Caine O'Rear, Suite 2600, 107 St. Francis St., P.O. Box 123, Mobile, AL 36601, phone (334) 432-5511.

Opposing counsel: J. Gusty Yearout, Suite 500, 800 Shades Creek Pkwy., Birmingham, AL 35209, phone (205) 414-8160.

This case involved claims of securities fraud, civil RICO, common law conspiracy to defraud, among others, arising from the insolvency of Life Insurance Company of America (LICA). The focus of the allegations were three transactions involving the unconditional guarantee by LICA of debts of subsidiary corporations involved in the development of a resort community known at Point Aquarius. The plaintiff, Receiver of LICA, alleged that the interlocking directorate of American Bank, subsidiary corporations of LICA, and the individual investors engaged in self-dealing and manipulative transactions, and dominated LICA. The co-defendants successfully argued that any such allegations were time-barred. The plaintiff countered that the statute of limitations was tolled until the appointment of a receiver for LICA because the company was dominated by the defendants. Although the court agreed that the statute of limitation was tolled, it found that the Receiver and his predecessor Receiver had sufficient notice of the key facts of the alleged fraud well before the suit was filed. The trial court and the Eleventh Circuit ruled that the statute of limitations barred the plaintiff's claim.

My clients were the individual defendants, a group of investors from Baton Rouge, Louisiana: Rolfe H. McCollister, Donald A. Hayden, Karl E. Rodriguez, Sam A. Gallo, George E. McNutt, Jr., and Robert Holloway. I had virtually full responsibility for representing these clients, including taking all depositions, conducting all discovery, writing all motions and briefs, and handling the arguments in trial court and the Eleventh Circuit.

The Eleventh Circuit opinion is Hunt v. American Bank, 783 F.2d 1001 (11th Cir. 1986). The district court opinion is printed at 606 F. Supp. 1348.

5. Charles H. Giorlando v. Donn Corp.

- a) approximately 1983 - 1985
  - b) Federal District Court, Northern District of Alabama; Judge Sam C. Pointer, Jr.
  - c) Co-counsel Thomas A. Carraway, current whereabouts unknown.
- Opposing counsel Sam McCord, 600 Title Building, 300 21st Street North, Birmingham, AL

35203, phone (205) 252-2100.

This age discrimination case in which I represented the plaintiff resulted in a verdict of approximately \$26,000. The key to success in the case was the testimony of a statistician, who I had hired and prepared. Again, I had the primary responsibility for trial preparation and examination of witnesses.

6. Holt v. State Farm Mutual Automobile Insurance Co.

- a) approximately 1982 through 1986
- b) Circuit Court of Clay County; Judge Ingram
- c) Co-counsel: Edgar M. Elliott, 7 Baltursol (Shoal Creek), Birmingham, AL 35242, phone (205) 991-9441; Scaers Barnes, 80 North Central Ave., Alexander City, AL 35011, phone (256) 329-0809.

Opposing counsel: Larry Morris, 131 Main Street, Alexander City, AL 35011, phone (256) 329-2000.

This case involved four years of work, a two-and-a-half week trial, a twenty minute jury deliberation and resulted in a \$25 million verdict against our client State Farm.

The plaintiff alleged that State Farm committed fraud when it did not disclose to him that he could "stack" uninsured motorist benefits under additional policies he had. At the time of the plaintiff's uninsured motorist claim, the law about stacking coverage in Alabama was in flux, and the Alabama Supreme Court had not held that an insurance company was required to stack coverages in a factual situation similar to the plaintiff's. The jury obviously did not agree with our "state of the law" argument.

Edgar Elliott was the senior partner involved in this case, and he took more responsibility for the day-to-day handling of it than he did with other cases on which I worked. I was heavily involved at every stage of discovery, and wrote many unsuccessful motion briefs. We also filed two mandamus petitions with the Alabama Supreme Court with limited success, and for which I had the primary responsibility. Those decisions, both styled Ex Parte State Farm Mutual Automobile Insurance Co., are found at 469 So. 2d 574 (Ala. 1985) and 452 So. 2d 861 (Ala. 1984). At trial, I examined and cross-examined numerous witnesses. I was also heavily involved in preparing an appeal challenging the constitutionality of the punitive damage award when the case settled.

7. American Mutual Liability Insurance Company v. Phillips

- a. 1983 - 1986
- b. Jefferson County Circuit Court
- c. Co-counsel: Tom Christian, 1700 Financial Center, 505 20th St. N., Birmingham, AL 35203, phone (205) 795-6588.

Opposing counsel: Clay Alspaugh, 2323 2nd Avenue North, Birmingham, AL 35203, phone (205) 324-5635.

The case arose from a worker's exposure to cotton fibers resulting in her development of byssinosis. She was exposed to cotton fibers on only one day within the statute of limitations period. She sought to have the full measure of damages rule that had been statutorily created for

asbestos exposure cases applied to her. Under the supervision of Tom Christian, I represented American Mutual, the worker's compensation carrier that was sued for negligent inspection. My primary role in the case was the preparation of a partial summary judgment motion and brief, and then the preparation of the interlocutory appeal when the court denied that motion. The Alabama Supreme Court agreed with our argument that the statute at issue, by its plain language, only applied to asbestos cases and did not change the measure of recovery in all continuous-exposure tort cases. The Court reversed the trial court, ruling that the plaintiff could only recover for injuries she sustained on the one day of exposure to cotton fibers that was within the statutory limit. The decision is reported at 491 So. 2d 904 (Ala. 1986).

8. Banton Industries, Inc. v. Dimatic Die & Tool Co.
    - a. Approximately 1985 - 1986
    - b. Federal District Court Northern District of Alabama;  
Eleventh Circuit Court of Appeals
    - c. Co-counsel: Edgar M. Elliott, 7 Baltursol (Shoal Creek), Birmingham, AL 35242,  
phone (205) 991-9441
- Opposing counsel: Tom Elliott, 400 Park Place Tower, 2001 Park Place North,  
Birmingham, AL 35203

This case involved the sale of allegedly defective pulleys by Dimatic, our client, a Nebraska company, to the plaintiff, an Alabama business. We obtained a dismissal of the case, which was affirmed on appeal, based on lack of personal jurisdiction. The plaintiff's purchase was unsolicited, and the pulleys were shipped F.O.B. Omaha. The court held that the defendant lacked sufficient contacts with the forum to permit the exercise of personal jurisdiction within the operation of due process. I prepared the brief in support of the motion to dismiss, as well as the appellate brief. The Eleventh Circuit's decision appears at 801 F.2d 1283 (11th 1986).

9. Dunaway v. King
    - a. Approximately 1986-1987
    - b. Jefferson County Circuit Court, Judge Claude Hughes
    - c. Co-counsel: Edgar M. Elliott, 7 Baltursol (Shoal Creek), Birmingham, AL  
35242, phone (205) 991-9441
- Opposing counsel: Robert T. Wilson and Garve Ivey, Jr., 315 W. 19th Street,  
Jasper, AL 35502, phone (205) 221-4644.

A tragic shooting that resulted in a death led to this case alleging negligent entrustment of a vehicle and handgun. I was primarily responsible for all discovery and preparation of the case, including the brief in support of summary judgment and the brief in the subsequent appeal. We represented the defendants through their insurance company, which I believe was State Farm. The courts agreed with my argument that the Exhibits offered by the plaintiff's attorney in an attempt to create a genuine issue of fact to preclude summary judgment were inadmissible. Specifically, the plaintiff offered the pre-sentence report of the defendants' son who had been convicted of murder to show that the defendants had knowledge of their son's incompetence. The plaintiff's counsel, however, had failed to lay the proper predicate for its admission. The Court also clearly delineated the requirements for a negligent entrustment case, and agreed that the plaintiff had failed to present admissible evidence to create a genuine issue on those elements.

The significance of the case, in my opinion, lies in its adherence to the requirements of Rule 56, Ala. R. Civ. P., governing the type of evidence necessary to defeat summary judgment. The appellate decision is reported at 510 So. 2d 543 (Ala. 1987).

10. Eidson v. Johns-Ridout's Chapels, Inc.
  - a. approximately 1986 - 1987
  - b. Jefferson County Circuit Court, Judge Claude Hughes
  - c. Co-counsel: Tom Christian, 1700 Financial Center, 505 20th Street North, Birmingham, AL 35203, phone (205) 795-6588.  
Opposing counsel: Stephen D. Heninger, 2146 Highland Avenue, Birmingham, AL 35205, phone (205) 933-2345.

The mishandling of the body of a deceased loved one can give rise to a dangerous jury case from the perspective of the defendant. Therefore, in this case, we attempted to keep the plaintiff's claims of outrageous conduct, trespass, and breach of contract from ever reaching the jury. The trial court agreed that all claims, filed five years after the events, were time barred. On appeal, the Alabama Supreme Court clarified the distinctions between trespass and trespass on the case, and between actions ex contractu and ex delicto. The Court affirmed summary judgment on the outrageous conduct and trespass counts, but found that the plaintiff produced at least a scintilla of evidence to support a claim for breach of contract. On remand, we settled the case rather than risk a large jury verdict.

My responsibilities included handling discovery, presenting the written and oral arguments to the trial judge and writing the brief for the Alabama Supreme Court. The appellate decision is reported at 508 So. 2d 697 (Ala. 1987).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege unless the privilege has been waived.

#### 1. Teaching and Legal Scholarship

The most important legal activities that I have pursued since 1990 center around educating law students and writing articles about important areas of the practice of law. In the legal writing courses, I emphasized the importance of following court rules and being candid with the court about the facts and law. The students are required to follow the Eleventh Circuit Rules of Appellate Procedure when writing their briefs. The advanced procedure seminar that I teach further emphasizes the importance of understanding, complying with, and using the appropriate procedural rules.

In all the classes that I have taught, I have emphasized to my students the importance of ethical behavior that is beyond reproach, and the need for civility in dealing with other lawyers, the court, and clients. In both insurance law and professional responsibility classes in particular, I have paid much attention to the problems that arise because of conflicts of interest among clients and lawyers. My efforts in this regard have not been limited to class room activities: I have written several articles and made Continuing Legal Education presentations that focus on these issues,



and much of my work as an expert witness has involved issues of conflict of interest between insurance companies, defense counsel, and the client. If I have been successful in driving home these important points to my students and to practicing attorneys, then I have made a more significant impact for good on the practice of law than all the cases I ever handled.

1. Alabama Guaranty Association General Counsel.

Beginning in 1982 and until I began teaching in 1990, I served as general counsel for the Alabama Insurance Guaranty Association. In that role, I advised the Association in matters involving the interpretation of the Guaranty Association Act, handled major cases involving interpretation of that statute, and oversaw the handling of cases by other attorneys in Alabama and in other states. I worked very closely with attorneys in the Alabama Insurance Department, and attended meetings of the Guaranty Association Board of Directors. My greatest success was in educating trial judges, plaintiffs and defense lawyers regarding the special provisions applicable to the Guaranty Association. My article on guaranty association law listed above, was subsequently cited by the Alabama Supreme Court in Windle v. Alabama Insurance Guaranty Assoc., 591 So. 2d 78 (Ala. 1991).

2. Alabama Health Maintenance Organization Guaranty Association General Counsel.

In 1987, upon recommendation from attorneys in the Alabama Insurance Department, I became general counsel for the Alabama Health Maintenance Organization Guaranty Association. My primary responsibility was to work with the Alabama Insurance Department to promulgate regulations to implement the organization and operation of the HMO Guaranty Association, which had been created with a one-sentence provision by the Alabama Legislature.

3. Carrier Express v. The Home Insurance

Since leaving private practice, I have served as an expert witness in numerous cases involving insurance questions. Most of those cases have centered around coverage questions and the insurance company's defense obligations. Probably the most significant case on which I have served in that capacity is Carrier Express v. The Home Insurance Co. That case involved the defense of the insured under a reservation of rights to later deny coverage. A few years before that case arose, the Alabama Supreme Court had held that an insurance company and defense counsel hired by it to defend the insured under a reservation of rights owe the insured an "enhanced obligation of good faith." Neither the insurance company nor defense counsel in this case adhered to the specific obligations of good faith required by industry standards or Alabama law. In deposition and at trial, I testified about the ways in which the defense of the insured fell short of industry standards and amounted to a violation of the obligation of good faith. The case resulted in a jury verdict for \$7.5 million. Post trial motions were denied; the decision is reported at 860 F. Supp. 1465 (N.D. Ala. 1994). The case significantly enhanced the understanding of lawyers and insurance companies about the need to carefully handle reservation of rights defenses.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The only anticipated income from previous business relationships after confirmation would be income from Highway 280 LLC, stocks and mutual funds, and the Samford University retirement plan. I am vested in the retirement plan, which is a defined benefit plan administered by the Southern Baptist Annuity Board and from which I anticipate beginning to draw benefits at age 65. Highway 280 LLC is a commercial real estate venture in which I have a small partial ownership interest. I own stock in Compass Bank and in mutual funds through A. G. Edwards.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

Potential conflicts of interest would probably be limited to matters involving my husband's firm, Samford University, and entities in which I have a financial interest. Those entities would be listed on the recusal list in the clerk's office so that no cases involving those entities would be assigned to me. In all instances I would follow the Code of Judicial Conduct in resolving issues of conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report attached.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

See net worth statement attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held any official position in any political campaign. My only involvement has been behind the scenes and even without the knowledge of the candidates. In virtually every judicial election in Alabama, I have sent letters to family and friends giving my recommendations and the reasons for my endorsements. We have had yard signs for numerous candidates, especially judicial ones. In college and law school, I participated in numerous campaigns by handing out literature door to door and in parking lots. I cannot recall the names of all the candidates. I do recall handing out literature in Senator Shelby's first congressional campaigns, and in his initial senate campaign.

AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Bowdre, Karen O.		<b>2. Court or Organization</b> District Court-N.D. Alabama	<b>3. Date of Report</b> 8/5/01
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. District Judge - Nominee		<b>5. Report Type (check type)</b> X <u>  </u> Nomination, Date 08/02/2001 Initial <u>  </u> Annual <u>  </u> Final <u>  </u>	<b>6. Reporting Period</b> 01/01/2000 to 07/05/2001
<b>7. Chambers or Office Address</b> Cumberland School of Law, Samford Univ., Lakeshore Dr. Birmingham, AL 35229		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  <b>Reviewing Officer</b> _____ <b>Date</b> _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)☐ **NONE** (No reportable positions.)**NAME OF ORGANIZATION / ENTITY**

1	Professor of Law	Cumberland School of Law, Samford University
2	Board of Directors	Brigham-Williams, Inc
3	Proprietor	KayBee Saddlebreds

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)**DATE****PARTIES AND TERMS**☐ **NONE** (No reportable agreements.)

1	05/01/01	Cumberland School of Law, Samford University (Employment on annual salary basis as Law Professor)
2	09-14-99	Piper Marbury Rudnick & Wolfe, LLP (Consultant on hourly basis as Expert Witness)
3	01/01/00	Samford University (Defined Benefit Plan)

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)**DATE****SOURCE AND TYPE****GROSS INCOME**  
(yours, not spouse's)☐ **NONE** (No reportable non-investment income.)

1	12-31-00	Samford University, Cumberland School of Law (Law Professor)	75,471
2	05-11-00	Cunningham Bounds - Expert Witness Fee	1,740
3	12-31-00	Rives & Peterson- Expert Witness Fee	460
4	12-31-00	Piper Marbury Rudnick & Wolf, LLP	17,396

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Bowdre, Karon O.	8/5/01

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
<input type="checkbox"/> NONE		
1 Exempt		
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
<input type="checkbox"/> NONE			
1 Exempt			
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
<input type="checkbox"/> NONE			
1 None			
2			
3			
4			
5			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bowdre, Karon O.	Date of Report 8/5/01
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(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

**VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions**

A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
1 LLC #1- Retail Shopping/Real Estate 1, Birmingham, AL	B	Distribut ion	J	N	Exempt				
2 First Commercial Bank Acct	A	Interest	J	T	Exempt				
3 First Commercial Bank Acct	A	Interest	J	T	Exempt				
4 American Fund-Fundamental Investors	A	Dividend	J	T	Exempt				
5 American Fund-Europacific Growth Fund	A	Dividend	J	T	Exempt				
6 American Fund-Capital World Growth and Income	A	Dividend	J	T	Exempt				
7 Centennial Money Market Trust	A	Dividend	J	T	Exempt				
8 Compass Bank Common Stock	A	Dividend	K	T	Exempt				
9 Centennial Money Market	A	Dividend	J	T	Exempt				
10 Berger Omni Investment Fund Tr Small Cap Value Fund	A	Dividend	J	T	Exempt				
11 Dreyfuss Appreciation Fund	A	Dividend	J	T	Exempt				
12 Fundamental Investors	A	Dividend	J	T	Exempt				
13 Growth Fund of America	A	Dividend	J	T	Exempt				
14 Lord Abbett Dev. Growth Fund	A	Dividend	J	T	Exempt				
15 Putnam Intl Growth Fund	A	Dividend	J	T	Exempt				
16 T. Rowe Price Intl Stock Fund	A	Dividend	J	T	Exempt				
17 Compass Bank Account	A	Interest	J	T	Exempt				

1 No/Gain Codes: A-\$1,000 or less Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bowdre, Karen O.	Date of Report 8/5/01
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

**VII Page 2 INVESTMENTS and TRUSTS— income, value, transactions**

A Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
18 Smith Barney Money Funds Cash Port CL Fund	B	Dividend	K	T	Exempt				
19 RGBK Common Stock	A	Dividend	J	T	Exempt				
20 Legg Mason Value Trust	C	Dividend	J	T	Exempt				
21 Elan Corp PLC ADR	A	Dividend	K	T	Exempt				
22 Merck Common Stock	A	Dividend	K	T	Exempt				
23 Microsoft Common Stock	A	Dividend	J	T	Exempt				
24 Templeton Dragon Fund	A	Dividend	J	T	Exempt				
25 Walmart Stores Common Stock	A	Dividend	J	T	Exempt				
26 Pinnacle Bank Common Stock	A	Dividend		T	Exempt				
27 Alabama 06 Judicial Bldg Bonds	A	Distribut ion	J	W	Exempt				
28 Fundamental Investors Fund (IRA)	A	Dividend	J	T	Exempt				
29 Growth Fund of America (IRA)	A	Dividend	J	T	Exempt				
30 New Perspective Fund (IRA)	A	Dividend	J	T	Exempt				
31 Small Cap World Fund-IRA	A	Dividend	J	T	Exempt				
32 Wash Mut Inv Fund-IRA	A	Dividend	J	T	Exempt				
33 Pfizer Common Stock-IRA	A	Dividend	J	T	Exempt				
34 Aim Equity Funds-IRA	A	Dividend	K	T	Exempt				
1 Net/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Bowdre, Karon O.		Date of Report 8/15/01	
(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)					
<b>VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions</b>					
A Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)					
35 Aim Inv-Global Consumer-IRA	A	Dividend	J	T	Exempt
36 Capital World Growth&Inc-IRA	A	Dividend	K	T	Exempt
37 Euro Pac Growth-IRA	A	Dividend	K	T	Exempt
38 Invest Co of Amer-IRA	A	Dividend	K	T	Exempt
39 Growth Fund Amer-IRA	A	Dividend	L	T	Exempt
40 Liberty Fund Trust-IRA-Newport Tiger	A	Dividend	J	T	Exempt
41 New Economy Fund-IRA	A	Dividend	J	T	Exempt
42 Smallcap World Fund-IRA	A	Dividend	L	T	Exempt
43 Wash Mut. Inv Fund-IRA	B	Dividend	L	T	Exempt
44 Fidelity Disc Equity-IRA	A	Dividend	J	T	Exempt
45 Fidelity Equity Income	B	Dividend	K	T	Exempt
46 Fidelity Discp. Equity	B	Dividend	J	T	Exempt
47 AmSouth Bancorp Common Stock	A	Dividend	J	T	Exempt
48 Bank of America Common Stock	A	Dividend	J	T	Exempt
49 Van Kampen Amer Value Fund	A	Dividend	J	T	Exempt
50 Van Kampen Emerging Growth Fund	A	Dividend	J	T	Exempt
51 Compass Bank Acot	A	Interest	J	T	Exempt
* Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 Col. B1, D4    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated					



<b>FEDERAL INCOME TAX RETURN</b>			Name of Person Reporting Bowdre, Karen O.			Date of Report 8/5/01			
<b>FINANCIAL DISCLOSURE REPORT</b> <span style="float: right;">(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</span>									
<b>VII. Page 4 INVESTMENTS AND TRUSTS— income, value, transactions</b>									
A. Description of Assets (including trust assets)		B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period			
Place "00" after each asset exempt from prior disclosure.		(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Method Code (Q-W) (redemption)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure		
							(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
52 Pioneer Growth/Income Fund		B	Dividend	K	T	Exempt			
53 Inv. Co of Amer Fund		A	Dividend	K	T	Exempt			
54 Putnam Voyager Fund		A	Dividend	K	T	Exempt			
55 Inv. Co. of America Fund		A	Dividend	K	T	Exempt			
56 ICOS Common Stock		A	Dividend	J	T	Exempt			
57 ALKS Common Stock		A	Dividend	K	T	Exempt			
58 Trust I; Inc.Benef.; Trustee= Spouse; See Part VIII		D	Distribut ion	M	N	Exempt			
59 AmSouth Bank Acct		B	Interest	K	T	Exempt			
60 American New Perspective Fund		A	Dividend	J	T	Exempt			
61 American New Perspective Fund		A	Dividend	J	T	Exempt			
62 Cisco Systems Common Stock		A	Dividend	J	T	Exempt			
63 Seligman Henderson Growth Fund		A	Dividend	J	T	Exempt			
64 Trust II; Inc. Bene.; Spouse=Trustee, see Part VIII.		E	Distribut ion	M	N	Exempt			
65 LLC II, interest in eVault, Inc. & CCN, Inc.		A	Distribut ion	K	N	Exempt			
66 401(k)8 The Principal, See Part VIII.		C	Dividend	K	T	Exempt			
67 Lawfirm Capital Contribution (Spouse)			None	K	N	Exempt			
68 Trust III; Inc. Benef.; Life Insurance; Trustee=Spouse		A	None	K	N	Exempt			
Inc/Gain Codes: A=\$1,000 or less Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Bowdre, Karen O.		Date of Report 8/5/01	
<b>Part 5 INVESTMENTS and TRUSTS-- income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>					
A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
					(2) Date: Month- Day
					(3) Value Code (J-P)
					(4) Gain Code (A-H)
					(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
69 Trust IV, Inc. Benef.; Life Insurance; Trustee=Spouse	A	None	J	W	Exempt
70					
71					
72					
73					
74					
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85					

1st Gain Codes: A=\$1,000 or less (Col. B1, D4)		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3)		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2)		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Bowdre, Karon O.	8/5/01

**ADDITIONAL INFORMATION OR EXPLANATIONS.**  
(Indicate part of report.)

Trust I Assets: interest in LLC owing Timberland, Apts in Macon, GA vicinity.  
Trust II Assets: interest in LLC owning Timberland, Apts in Macon, GA vicinity.  
401(k): Large Cap Stock Index, Small Company Blend, International Stock  
Fund

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Bowdre, Karon O.	8/5/01

**SECTION HEADING.** (Indicate part of report.)  
Information continued from Parts I through VI, inclusive.  
PART 2. AGREEMENTS (cont'd.)

Line	Date	Parties and Terms
4	09-03-00	Smith & Ely (Consultant on hourly basis as Expert Witness)
5	05-01-00	Cumberland School of Law, Samford University (employment on annual salary basis as Law Professor)
6	11-01-00	Burr & Forman (Consultant on hourly basis as Expert Witness)
7	05-30-01	Bainbridge & Mims (Consultant on hourly basis as Expert Witness)
8	04-30-01	Barnes & Radney (Consultant on hourly basis as Expert Witness)

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	01/01/00	Kaybee Saddlebreds (Breed, Train and Show American Saddlebred Horses)	1,000
6	01/01/01	Self-Employed-Private Law Practice	
7	12-31-99	Samford University, Cumberland School of Law (Law Professor)	68,291
8	12-31-00	Barnes & Radney (Expert Witness Fee)	8,412
9	12-31-00	Private Law Practice	
10	12-31-99	Private Law Practice	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Bowdre, Karon O.	8/5/01

**CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 801 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Karon O. Bowdre Date 8/05/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

FINANCIAL STATEMENT  
of  
J. Birch Bowdre/Karon O. Bowdre

## Assets Summary:

(1) Cash on Hand:	43,808.00
(2) Life Insurance (CSV)	80,708.00
(3) Stock & Securities:	440,675.00
(4) Real Estate:	550,000.00
(5) Automobiles:	63,700.00
(6) Qualified Retirement Accts.	415,354.46
(7) Other Assets:	<u>70,800.00</u>
Total Assets .....	1,665,045.46

## Liabilities Summary:

(8) Notes Payable to Bank	0.00
(9) Loans Against Life Insurance	0.00
(10) Accounts Payable	20,000.00
(11) Mortgage Payable/Real Estate	240,168.00
(12) Other Liabilities	<u>40,000.00</u> *
Total Liabilities.....	300,168.00 *

**(13) Net Worth**

\*Contingent debt and LLC guarantees are estimated

1,364,877.46 \***(1) Cash on Hand:**

BANK	OWNER	
(a) AmSouth Checking PFS	Joint	38,786.00
(b) First Commercial Bank	KOB	4,800.00
(c) First Commercial Bank	JBB	222.00

**(2) Life Insurance:**

(a) New England Life 53k WL	JBB	17,796.00
(b) New England Life 133k variable	JBB	26,905.00
(c) New England Life 151k variable	JBB	28,034.00
(d) New England Life 93k OL	KOB	7,973.00

**(3) Stock & Securities:**

(a) Fidelity Cash Reserves	JBB	2,937.00
(b) Fidelity Equity Income	JBB	17,982.00
(c) Fidelity Disciplined Equity	JBB	12,909.00
(d) Shearson Lehman Hutton (netted out qtrly-for tax estimates)	JBB	15,175.00
(e) Legg-Mason Value Trust	JBB	13,300.00
(f) A.G.Edwards Account	JBB	71,565.00
(g) A.G.Edwards Account	JBB	34,955.00
(h) FSC Securities	JBB	34,851.00
(i) FSC Securities	JBB	7.00
(j) Paine Webber Account	JBB	42,449.00
(k) A.G.Edwards Account	KOB	39,322.00
(l) A.G.Edwards Account	KOB	70,502.00
(m) Custodian Accounts (A.G. Ed.)		39,635.00
(n) Custodian Accounts (A.G. Ed.)		45,086.00

<b>(4) Real Estate:</b>			
(a)	Residence	Tenants-in-Com	550,000.00
<b>(5) Automobiles:</b>			
(a)	1984 Saab	JBB	700.00
(b)	1996 Volvo	KOB	18,000.00
(c)	1995 Porsche	JBB	45,000.00
<b>(6) Qualified Retirement Accts.</b>			
(a)	IRA-A.G. Edwards	JBB	327,836.00
(b)	IRA-Fidelity	JBB	8,206.00
(c)	IRA-The Principal	JBB	27,852.00
(d)	IRA-A.G. Edwards	KOB	49,145.00
(e)	IRA-Fidelity	KOB	2,315.46
<b>(7) Other Assets:</b>			
(a)	1972 Flying Scot Sailboat		800.00
(b)	KayBee Saddlebreds	KOB	70,000.00
<b>(8) Notes Payable to Bank</b>			
(a)	KOB Note for Mother's Car	Compass	0.00
<b>(9) Loans against Life Insurance</b>			
			0.00
<b>(10) Accounts Payable</b>			
(a)	(a) Fed/State Inc. Tx-current qtr		20,000.00
<b>(11) Mortgage Payable on Real Estate:</b>			
(a)	Compass Bank -BHM	JBB/KOB	240,168.00
(b)	Compass Bank- Equity Line	JBB/KOB	0.00
<b>Contingent Liabilities:</b>			
(12)	(a) Law Firm	JBB	
	(Jointly liable with other law partners for guaranteed LLC debt)		40,000.00

Date 8/05/01 Name Karnd. Boudre

The undersigned hereby certifies that to the best of its knowledge the information contained in this financial statement is true and correct as of 8/05/01

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Conduct calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While in private practice in the 1980's, I handled several matters for no fee or for a reduced fee. Some of these cases were referrals from the bar association. One such case involved a bankruptcy petition; another case involved an adoption. Many of my individual immigration clients could not pay a full fee. Because I believed they should not expect a free ride for every service they needed, I charged reduced fees based on their ability to pay.

Once I began teaching, I continued pro bono service. I handled a complex insurance dispute for a woman whose house burned down. I also advised numerous immigrants, primarily Samford students, about their immigration status providing them what guidance I could or referring them to good immigration counsel to represent them for a reduced fee.

One of the true joys of teaching has been the opportunity to have an impact on students' lives. Since 1991, I have served as advisor to the student Christian Legal Society Chapter. As time and interest allowed, I have led a women's Bible study for this group, and have sponsored numerous fellowship events at my house. We have worked to increase interaction between Cumberland CLS students and attorneys in the Birmingham area, and also with the student chapter at the University of Alabama.

For several years I coached the moot court teams that participated in the University of Connecticut Insurance Moot Court Competition. I often work with competition teams and judge intramural trial and moot court competitions.

One of the greatest pleasures of teaching involves the opportunity to interact with students. I try to be available to students to help them in any way possible. In addition to work with students through CLS and Moot Court, I often find myself counseling students with a variety of needs, including students facing health problems, marital problems, academic problems, and career decisions. I regularly work with students who have problems with writing or analysis to help them improve their exam-taking skills.

I have also worked with student groups to bring speakers or programs to campus involving issues such as international religious freedom, alternative dispute resolution and the role of forgiveness in the healing process of crime victims. Through CLS, I have encouraged student involvement in rendering legal service to the poor in our community.

- B. My family and I are active members of Dawson Baptist Church, where my husband and I co-teach a Sunday School class for young married couples. Through Dawson, I

participated in summer Bible schools for inner city children; hosted Christmas parties for children of inmates and inner city children; coordinated "Project Angel Tree," which over five years provided Christmas presents to more than one thousand area children of inmates; and worked with preschoolers and children in Vacation Bible School or similar programs.

As a survivor of breast cancer, the Susan G. Komen Foundation has become an important organization for me. For two years, I worked on the Education Committee of the Birmingham Chapter, and volunteered at the Race for the Cure. I have had the opportunity to speak to several area groups about breast cancer, and regularly mentor women fighting cancer.

From 1993 until 1999, I served on the Board of Directors of Christian Legal Society. CLS exists to help lawyers integrate their faith into their daily practice of law. It encourages lawyers to become involved in providing legal service to the poor, and strives to protect the religious liberty of all Americans. Since 1996, I have served on the CLS Law Student Ministries Committee, having served two terms as its chairman. In working with law students across the country, CLS encourages them to not forget their faith as they become absorbed with the law.

I have also had the opportunity to serve in the schools which my children have attended. I regularly read to first and second graders, helped with book sales for the libraries, chaperoned day trips, participated in Enrichment Day programs, chaperoned band trips, worked in concession stands, and served on the PTA board as communications committee co-chair.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates — through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I know of no selection commission in my jurisdiction for federal judges.

After discussing my interest in the federal bench with my family, I submitted a letter stating my interest, along with a copy of my resume and other materials, to Senator



Richard Shelby in January of 2001. I subsequently met with Senator Shelby to discuss my interest and qualifications in depth. I met with Senator Sessions and was interviewed by a member of his staff. I also met with local Republicans to garner their support. In May, I met with Deputy White House Counsel Tim Flanigan, and members of his staff. I answered numerous questionnaires and was interviewed by the FBI. On August 2, President Bush announced his intention to nominate me to the Federal District Court for the Northern District of Alabama.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

A judge has basically two responsibilities: to apply the law to the case before her to resolve the legal dispute, and to insure that all parties play by the rules of court, thus allowing for justice to be achieved.

In applying the law to the case, the judge should seek to ascertain and understand the controlling law. The judge should not create new law, or stretch existing law beyond its intent, but should apply the law to the specific case before her.

In determining how to apply controlling law, the judge should always be guided by the Constitution, the supreme law of the land. If the case falls within the purview of a federal statute, the judge should study that enactment to understand its meaning and operation. Precedent cases should also be studied to determine how that law has been applied in other cases, and the reasoning of those courts in doing so. Similarly, in diversity cases, the court should apply law and precedent cases from the controlling jurisdiction.

The court should leave to the legislative body the job of creating new law or expanding existing law. By recognizing the limitations of applying the law, the court leaves to the elected legislative body its job of making law. Thus, those two branches of government co-exist without the court stepping into the shoes of the legislature. The judge should remember that failure to act by the law-making body can mean that the law makers consciously decided not to act, or not to change existing law. The court should, therefore, not act in its stead. At the same time that a judge limits her task to applying law, she should also fashion a ruling that resolves the precise dispute before her.

The separate responsibilities of the different branches of government, however, do not mean that the judicial branch should shirk its responsibility to oversee the actions of the other branches. The system of checks and balances essential to good government mandates that the judicial branch review laws made by the legislative branch when brought before it in the context of a specific dispute. That review, however, should be limited to whether the legislation conforms with the mandates of the Constitution. As the supreme law of the land, the Constitution provides the guide by which all legislative and judicial action must be tested.

Senator SCHUMER. Thank you.  
Mr. Friot?

**STATEMENT OF STEPHEN P. FRIOT, NOMINEE TO BE DISTRICT  
JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA**

Mr. FRIOT. Senator, I echo what has been said about holding this hearing under these circumstances. I think it speaks to everything that you spoke to a few minutes ago, and I am very, very appreciative of holding this hearing under these circumstances. I also am very grateful for the support of Senators Nickles and Inhofe, and for the introduction from Senator Nickles.

My wife, Nancy, is the most dedicated kindergarten teacher in the State of Oklahoma, and for that reason she could not be here, but she is here in spirit. My son, Andy—if you will stand—is here. He came down from Syracuse and I am glad he is here because he can take the straight story home after we are through here.

I sincerely appreciate the opportunity to be here under these circumstances.

[The biographical information of Mr. Friot follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Stephen Perley Friot.
2. Address: List current place of residence and office address(es).  
  
Residence: Oklahoma City, Oklahoma.  
Office: 101 Park Avenue, Suite 700, Oklahoma City, OK 73102.
3. Date and place of birth.  
Troy, NY, August 14, 1947.
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
I married Nancy Robin Smith on March 20, 1976. Nancy is employed at a kindergarten teacher at Westminster School, 612 N.W. 44<sup>th</sup> Street, Oklahoma City, OK 73118.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
University of Oklahoma (College of Arts and Sciences), B.A. 1969 (major in Political Science, minor in Economics). Attended 1965-1969.  
  
University of Oklahoma College of Law, J.D. 1972. Attended August, 1969 - May, 1972.
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
1969 - 1972. I had no employment (or other listed relationships) as such during this period. For some of the time during law school, I was associated with the Paul J. Goddard District Agency of the Northwestern Mutual Life Insurance Agency in Norman, Oklahoma, as a college agent

(independent contractor). Due to the demands of law school, I was not active as an agent.

1972-present. Spradling, Alpern, Friot & Gum, L.L.P. I was employed by the firm as a clerk in the spring of 1972. I became an associate with the firm on June 1, 1972. I became a partner in the firm on February 1, 1975.

1991-92. I served as President of the Oklahoma County Bar Association in 1991 and 1992. Prior to that time, I served three terms on the OCBA Board of Directors.

1992-present. I have served as a member of the Board of Directors of Central Oklahoma Habitat for Humanity, Inc. since 1992. I have served as Vice Chairman of the Board since 1977.

1989-1991. From 1989 through 1991, I served as a member of the Board of Trustees of Mayflower Congregational Church. I was Chairman of the Board of Trustees in 1991.

1995-present. From 1995 through the present, I have served as a member of the Board of Trustees of the Oklahoma Housing Finance Agency.

2000-present. I am the President of the Ruth Bader Ginsburg American Inn of Court. My term began in September, 2000 and will end in September, 2002.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received. I have had no military service.
8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

University of Oklahoma College of Law: Law Day Moot Court Award (1971); United States Law Week Award (1972); Order of the Barrister (1972)

Legal Aid of Western Oklahoma, Inc. and Oklahoma County Bar Association: Pro Bono Lawyer of the Month, February, 1995 (see attachment at Tab A)

Central Oklahoma Habitat for Humanity: Outstanding Service Award (1995)

Ruth Bader Ginsburg American Inn of Court: Master of the Year, 1999 - 2000 Term

Boy Scouts of America: Silver Beaver Award for Outstanding Service to Youth (March, 2001); Golden Spoon Award, 2000 (Dutch Oven Cooking)

Listed in *Best Lawyers in America* (Woodward-White), 1989 - 2001 (Business Litigation)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Bar and Professional Organizations - Memberships and Offices Held:

Oklahoma Bar Association:

Member, House of Delegates, 1985, 1989, 1990, 1991, 1993, 1994  
Chairman, Committee on Legal Specialization, 1984-1985  
Chairman, Administration of Justice Committee, 1991, 1993

Oklahoma County Bar Association:

President, 1991-92  
Vice President, 1985-86  
Chairman, Oklahoma County Bar Foundation, 1977 -1978  
Chairman, Law Day Committee, 1975, 1999-2000  
Chairman, Bench and Bar Committee, 1988-1989  
Chairman, Legal Aid Committee, 1996-1997

Ruth Bader Ginsburg American Inn of Court:

President, 2000-2002  
Program Chair, 1998-1999

United States District Court for the Western District of Oklahoma:

Member, Civil Justice Reform Act Advisory Group, 1992-1993 (Appointee of Chief Judge Ralph G. Thompson)

Defense Research Institute (No offices held.)

International Association of Defense Counsel (No offices held.)

Lawyer-Pilots Bar Association (No offices held.)

National Transportation Safety Board Bar Association (No offices held.)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying: None.

Other:

Boy Scouts of America, Troop 4  
 Chairman, Troop Committee (1997-present), Assistant  
 Scoutmaster (1993-present)

Central Oklahoma Habitat for Humanity, Inc.  
 Vice Chairman of the Board of Directors (1997-present)

Edgemere Park Preservation, Inc. (No offices held.)

International Dutch Oven Society (No offices held.)

Last Frontier Council Inc., Boy Scouts of America  
 Chairman, Council Advancement and Recognition Committee  
 (1999-2001)

Oklahoma Heritage Association (No offices held.)

Oklahoma Housing Finance Agency (1995-present), Vice  
 Chairman (1999-present)

Thousand Islands Area Residents Association (No offices  
 held.)

Thousand Islands Association (No offices held.)

University of Oklahoma Alumni Association (No offices held.)

University of Oklahoma College of Law Alumni Association (No  
 offices held.)

11. Court Admission: List all courts in which you have been  
 admitted to practice, with dates of admission and lapses if  
 any such memberships lapsed. Please explain the reason for  
 any lapse of membership. Give the same information for  
 administrative bodies which require special admission to  
 practice.

Court Admissions (permanent admissions):

United States Supreme Court, March 22, 1976

Supreme Court of Oklahoma, June 1, 1972

United States Court of Appeals for the Tenth Circuit,  
 July 25, 1974

United States Court of Appeals for the Eighth Circuit,  
 July 18, 1990

United States District Court for the Western District of  
 Oklahoma, August 29, 1972

United States District Court for the Northern District of Oklahoma, September 27, 1978

United States District Court for the Eastern District of Oklahoma, August 22, 1985.

United States District Court for the Eastern District of Arkansas, February 14, 1990

United States District Court for the Western District of Arkansas, February 14, 1990

Note: In approximately 1979, I was admitted to practice in the United States Court of Appeals for the Fifth Circuit. Although this was a "permanent" admission, I sought admission only for the purpose of representing the appellee in Carey Lumber Company v. Bell, 615 F.2d 370 (5<sup>th</sup> Cir. 1980). I have been informed that this admission lapsed as a result of a purge of the membership rolls at the time the Fifth Circuit was split to form the Fifth and Eleventh Circuits.

Administrative Bodies Requiring Special Admission: None.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have made no speeches on issues involving constitutional law or legal policy.

Attached hereto, at Tabs B - v, are copies of all of my published writings, consisting of the following:

Published by Oklahoma County Bar Association Briefcase:

Justice Marian P. Opala, A Unique Fifty-Year Anniversary (May, 1990) (Tab B)

Voters Tell Us About Law-Related Education (January, 1991) (Tab C)

It's Time to Get Involved (September, 1991) (Tab D)

A Tribute to the Human Spirit (October, 1991) (Tab E)

The Law-Related Education Program Wants You! (November, 1991) (Tab F)



A Spirited Election and Some Serious Food For Thought  
(December, 1991) (Tab G)

Being Professional Does Not Include 'Rambo Tactics'  
(January, 1992) (Tab H)

Legal Aid of Western Oklahoma Deserves Your Support  
(February, 1992) (Tab I)

Fifth Annual Bench and Bar Conference is Almost Here  
(March, 1992) (Tab J)

The Unsung Heroes of Your County Bar - Part I (April ,  
1992) (Tab K)

The Unsung Heroes of Your County Bar - Part II (May,  
1992) (Tab L)

Quayle and ABA Leaders Are Both Right; And Both Wrong  
(July, 1992) (Tab M)

A Personal Note of Thanks (August, 1992) (Tab N)

Lest We Forget The Life of Jack High (September, 1992)  
(Tab O)

Published by the Oklahoma Bar Association Bar Journal:

The Oklahoma Bar Association's Lawyers' Creed and  
Guidelines of Professional Courtesy: Do they have a  
historical basis in our profession? Do they have any  
practical meaning? (Vol. 61, No. 24, June 16, 1980)  
(Tab P)

A Primer on the Interstate Land Sales Full Disclosure  
Act (Vol. 44, No. 51, December 29, 1973) (Tab Q)

Other publications:

Legal and Practical Aspects of Employee and Vendor  
Fraud in the Oil and Gas Industry, Texas Oil and Gas  
Law Journal, Vol. 4, Nos. 4 and 5 (March, 1990) (Tab R)

Conflicting Priorities: The Mortgage Lien vs. Other  
Consensual Liens and Statutory Liens, Oklahoma City  
University Seminar, March, 1986 (Tab S)

Removal and Conflict of Laws - A Study of Decisions by  
the Tenth Circuit and by the United States District  
Courts in Oklahoma, OBA Federal Practice and Procedure  
Seminar, March, 1990 (Tab T)

Opening Statement in Complex Cases, Lorman Education Seminar, May, 1997 (Tab U)

Discovery of Electronic Documents and Other Data, OBA Advanced Litigation Seminar, December, 2000 (Tab V)

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in excellent health. I had my last physical examination on May 29, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have held temporary judicial office three times, as follows:

Oklahoma Court on the Judiciary. On September 25, 1980, I was appointed by the then-President of the Oklahoma Bar Association to serve as a judge (one of nine judges, sitting *en banc*) of the trial division of the Oklahoma Court on the Judiciary. The Court on the Judiciary is Oklahoma's principal judicial disciplinary body. My appointment was *pro tem*, because the vacancy which I filled was created by the disqualification of one of the judges for service in the particular case in which I was appointed to serve. Consequently, my service was limited to *State of Oklahoma ex rel. Robert E. Lavender, Chief Justice, v. Raymond W. Graham, District Judge*, Case No. CJ-TD-80-2. On November 24, 1980, we handed down our decision compulsorily retiring Judge Graham. My service ended with the conclusion of the proceedings on that day.

Temporary Court of Appeals, State of Oklahoma. On two occasions, I have been appointed by the Chief Justice of the Supreme Court of Oklahoma to serve on a temporary division of the Oklahoma Court of Appeals. The Oklahoma Supreme Court has appointed these panels from time to time (as I recall, twice in the last twenty years) to assist in clearing the backlog of civil cases pending in the Oklahoma appellate courts. Each temporary panel consisted of three members and was assigned three civil appeals to decide. The jurisdiction of each panel was limited to the three cases assigned to it. The first time I served in this capacity was in the early 1980s. My second appointment to serve in this capacity occurred in 1991, and the temporary panel completed its work in 1992.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

My temporary service on the trial division of the Oklahoma Court on the Judiciary resulted in no written opinion. (I joined my fellow judges, sitting *en banc*, in signing a brief order compelling the retirement of Judge Graham.)

I have not been able to locate or otherwise retrieve copies of the opinions written by the panel of the Temporary Court of Appeals on which I served in the early 1980s. (We were required to return the appeal records to the Clerk of the Supreme Court upon completion of our service.)

Attached, at Tab W is a copy of the opinion which I wrote in Schmeisser v. Schmeisser, Case No. 75272 (February 25, 1992). This was one of the three cases decided by the second temporary panel on which I served. One of the other cases decided by this panel was a case of first impression involving the Oklahoma Horse Racing Commission. I did not author the opinion for the panel. The Oklahoma Supreme Court reversed the panel's decision in Butler v. Oklahoma Horse Racing Commission, 874 P.2d 1278 (Okla. 1994) (attached at Tab X). I do not recall the subject matter of the third case which was decided by this panel. I am informed by a Justice of the Oklahoma Supreme Court who was Chief Justice at the time of the appointment of the second panel on which I served that there is no index or other retrieval system by which the cases in which I participated can be identified.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

In May, 1995, Governor Frank Keating appointed me to serve on the Board of Trustees of the Oklahoma Housing Finance

Agency ("OHFA"). I was reappointed by Governor Keating in 2000, and now serve as Vice Chairman of the Board.

I have never been a candidate for elective public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have never served as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Since June 1, 1972, I have practiced with the firm now known as Spradling, Alpern, Friot & Gum, L.L.P. From 1972 through the fall of 1973, the address of the firm was 657 Skirvin Tower, Oklahoma City, OK 73102. From the fall of 1973 through February, 1975, the address of the firm was 310 Midland Center, Oklahoma City, OK 73102. Since February, 1975, the address of the firm has been 101 Park Avenue, Suite 700, Oklahoma City, OK 73102. From 1972 to date, the firm has had various names, as follows:

Halley, Spradling, Stagner & Alpern  
 Spradling, Stagner, Alpern & Friot  
 Spradling, Stagner, Alpern, Friot & Jones  
 Spradling, Alpern, Friot & Gum  
 Spradling, Alpern, Friot, Gum & Scoggins  
 Spradling, Alpern, Friot & Gum, L.L.P.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My practice has concentrated almost exclusively in civil litigation. In recent years, my experience in litigation matters has also resulted in a fair amount of counseling not directly related to pending litigation, but at least ninety percent of my time is still devoted to civil litigation. My experience in criminal matters is negligible.

During my first ten years in practice, a substantial portion of my time was consumed by litigation matters in which I represented a savings and loan association which the firm had represented since the 1920s. This involved some serious commercial litigation as well as more routine matters. In 1979, the senior litigation partner in our firm retired. My litigation practice became more diverse, and has remained diverse ever since. In the last ten years, I have tried cases to verdict in the following areas: employment law (Title VII and ADEA), product liability, aviation product liability, slip and fall, title insurance, slander of title, interference with contract rights, ground water pollution, real property covenants, insurance marketing practices, partnership and health care law.

During the same period, I have prosecuted or defended litigation to the point of pre-trial settlement or other disposition in the following additional areas: workplace toxicity, surface water pollution, Federal Tort Claims Act, breach of fiduciary duty (corporate and express trust), breach of partnership agreement, pipeline condemnation, highway condemnation, antitrust, intentional infliction of emotional distress, breach of covenant not to compete, pipeline trespass, child abuse and neglect (as a volunteer lawyer with Oklahoma Lawyers for Children), FAA certificate revocation, misappropriation of trade secrets, estates and trusts, defamation, wrongful discharge, commercial bribery and securities fraud.

Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I really have no typical client. I have represented individuals and local companies as well as national and international companies. The one area in which I have developed a degree of

specialization is aviation. In the last twenty years, I have represented manufacturers of aircraft, engines, component parts and avionics in a number of air crash litigation matters in Oklahoma, Arkansas, Louisiana and New York.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My court appearances have been frequent, with no significant variation in the frequency of court appearances in the 29 years I have practiced law.

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**Note with respect to answers to c(2)-(5), below:** The information set forth in these answers is based on my review of file cards back through 1985, augmented by my personal recollections, refreshed in some instances as I reviewed the file cards. As I reviewed the cards, I concluded that I could not reliably and consistently sort and classify matters opened earlier than 1985. Some pre-1985 matters were certainly memorable, but a good many were not. I believe that the information set forth in the answers to items c(2)-(5), below, would be substantially the same if it covered the entire period of my law practice.

2. What percentage of these appearances was in:  
 (a) federal courts;  
 (b) state courts of record;  
 (c) other courts.

My response as to "appearances" is based on trials, as opposed to motion hearings, etc. It would not be possible to quantify (and calculate percentages with respect to) *all* appearances, including motion hearings and other non-trial matters.

Federal court: fifty-eight percent.  
 State court and arbitration: forty-two percent.  
 Other courts: none.

In terms of actual cases (as opposed to trials), the state court percentage would be higher, due primarily to the fact that, in the late 1990s, I filed approximately forty-nine pipeline condemnation actions, all of which settled before

or shortly after the filing of the Commissioners' Report.

3. What percentage of your litigation was:  
(a) civil;  
(b) criminal.

All civil.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Twenty-four cases since 1985, all as chief counsel.

5. What percentage of these trials was:  
(a) jury;  
(b) non-jury.

Seventy-nine percent jury; twenty-one percent non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In alphabetical order:

Name of case: *American Airlines, Inc. v. United Technologies, Inc., Ex-Cell-O Corporation and National Automatic Products Company.*

Court: District Court of Tulsa County, Oklahoma, Supreme Court of Oklahoma and Supreme Court of the United States

Trial judge: Dan Boudreau (now on the Supreme Court of Oklahoma)

Case No.: CT-82-739

Citations: Certiorari denied, 493 U.S. 823, 110 S. Ct. 82, 107 L.Ed.2d 48 (1989). (There is no reported opinion from the Oklahoma appellate courts.)

Date filed: August 17, 1982

Dates tried: March 9-13, 1987.

Date closed: October 2, 1989

The party I represented: Ex-Cell-O Corporation, and, at a later stage, American Airlines, Inc. (by way of subrogation).

Co-counsel: Barbara Swimley, Referee, Supreme Court of Oklahoma, Room 114, State Capitol Building, Oklahoma City, OK 73105. Telephone: (405) 521-3849

Principal counsel for each of the other parties: For American Airlines, Inc.: H. Jerome Gette, Zelle, Hofmann, Voelbel, Mason & Gette, LLP, 1201 Main St., Suite 3000, Dallas, TX 75202. Telephone: (800) 229-5292. For National Automatic Products Company, Comtec, Inc. and Commercial Technology, Inc.: Joe B. Abbey, 6528 Baltimore Dr., No. 201, Dallas, TX 75225-3401 (address is as per attorney directory on State Bar of Texas web site). Telephone: (214) 528-0456 or (214) 739-2337.

Nature of my participation in the litigation: Lead counsel for Ex-Cell-O Corporation, and for American Airlines, Inc. during the appellate stage.

Summary of the substance of the case: This case arose from a fuel-fed fire which substantially damaged a Pratt & Whitney JT9-D jet engine in a test cell at the American Airlines maintenance facility in Tulsa, Oklahoma. The engine was being tested after having been overhauled at the maintenance facility. The fire was caused by a defectively-machined fuel nozzle nut. The fuel nozzle nut came loose during the test run, permitting an uncontrolled flow of raw fuel into the power turbine section of the engine, resulting in approximately \$1 million in damage to the engine. American Airlines sued United Technologies, Inc. (manufacturer of the engine through its Pratt & Whitney division), Ex-Cell-O Corporation (now Fuel Systems Textron, Inc., manufacturer of the fuel nozzle assembly), and National Automatic Products Company (manufacturer of the fuel nozzle nut). I initially represented Ex-Cell-O, the manufacturer of the fuel nozzle assembly. It soon became apparent that American Airlines would recover and that Ex-Cell-O Corporation was the first clearly solvent party in the chain of distribution of the defective fuel nozzle nut. Consequently, Ex-Cell-O settled with American Airlines and



United Technologies (Pratt & Whitney), and sought indemnity from National Automatic Products Co. ("**Napco**"). Ex-Cell-O also joined Napco's first and second tier parent companies, Comtec, Inc. and Commercial Technology, Inc., seeking a solvent source of indemnity by piercing the corporate veil.

The jury returned a verdict in favor of American Airlines, Inc. in the amount of \$944,000. In a second phase of the trial, the jury found that Napco was the instrumentality of Commercial Technology, Inc. (but not of Comtec, Inc.). Accordingly, judgment was entered against Napco and Commercial Technology, Inc.

The challenges to *in personam* jurisdiction by Napco and Commercial Technology, Inc. were unsuccessful in the trial court and in the Oklahoma Supreme Court. The United States Supreme Court denied certiorari in 1989.

Final disposition of the case: The case was settled as between Ex-Cell-O Corporation and American Airlines, Inc. Ex-Cell-O then settled all of the issues between it and Commercial Technologies, Inc. and some of the issues between it and Napco. The matter was finally closed as between Ex-Cell-O and Napco with the denial of certiorari by the United States Supreme Court.

Name of case: *Larry and Leona Beck v. Trigg Drilling Co., Inc., Arkla, Inc., Samson Resources Company, and Dyco Petroleum Corp.*

Court: District Court of Beckham County, Oklahoma, Oklahoma Court of Civil Appeals, United States Bankruptcy Court for the Western District of Oklahoma.

Trial judge: Doug Haught

Case No.: C-92-227

Citations: None.

Date filed: November 12, 1992

Dates tried: February 22 - March 1, 1994

Date closed: January 9, 1997

The parties I represented: Larry and Leona Beck

Co-counsel: Pat O'Hara, Spradling, Alpern, Friot & Gum, L.L.P., 101 Park Avenue, Suite 700, Oklahoma City, OK 73102. Telephone: (405) 272-0211.

Principal counsel for each of the other parties: Arkla, Dyco and Samson were represented by Arthur F. Hoge, III, Mee, Mee & Hoge, P.L.L.P., 1900 N.W. Expressway, Suite 1400,

Oklahoma City, OK 73118. Telephone: (405) 848-9100. Trigg Drilling was represented by Kevin L. Miller, 210 Park Avenue, Suite 2050, Oklahoma City, OK 73102. Telephone: (405) 235-9371.

Nature of my participation in the litigation: Lead counsel for the plaintiffs.

Summary of the substance of the case: The plaintiffs operated a small farm and cow-calf operation in western Oklahoma. The very low-chloride fresh water underlying their land was polluted by an unlined reserve pit which was built and used by Trigg in oil and gas drilling operations. Dyco was made a defendant because it was the operator of the well. Samson was a defendant because it succeeded to Dyco's position. Arkla was a defendant because Arkla contracted to remediate the reserve pit but intentionally failed to remediate the saltwater pollution. The jury returned a verdict in favor of the plaintiffs.

Final disposition of the case: The judgment of the trial court was reversed by the Oklahoma Court of Appeals. While the appeal was pending, Trigg Drilling Co., Inc. filed a petition in bankruptcy. Prior to retrial in the District Court, a settlement was reached between the plaintiffs and all defendants (bankrupt and non-bankrupt) in a settlement conference which was conducted by United States District Judge Lee R. West at the request of the Bankruptcy Judge.

Name of case: *Continental Federal Savings and Loan Association v. Delta Corporation of America*

Court: United States District Court for the Western District of Oklahoma

Trial judge: Fred Daugherty

Case No.: CIV-75-0630-D

Citations: *Continental Federal Savings and Loan Association v. Delta Corporation of America*, 71 F.R.D. 697 (W.D. Okla. 1976); *Continental Federal Savings and Loan Association v. Delta Corporation of America*, 425 F. Supp. 371 (W.D. Okla. 1976).

Date filed: July 28, 1975.

Dates tried: June 23-25, 1976.

Date closed: August 31, 1979.

The party I represented: Continental Federal Savings and Loan Association

Co-counsel: George S. Corbyn, Jr., 211 N. Robinson, Suite 1120, Oklahoma City, OK 73102. Telephone: (405) 239-7055.

Principal counsel for each of the other parties: Jack L. Freeman, 2500 S. Broadway, Suite 100, Edmond, OK 73013. Telephone: (405) 341-6510.

Nature of my participation in the litigation: Lead counsel for plaintiff.

Summary of the substance of the case: This was an action by Continental Federal Savings & Loan Association against Delta Corporation of America, in which Continental Federal alleged (and the jury found) that Delta had failed to comply with its obligations under a contract for the servicing of mobile home loans.

Final disposition of the case: The case was settled during the early stages of Delta's appeal from the District Court judgment.

Name of case: *Knight v. Eagle Snacks, Inc.*

Court: United States District Court for the Western District of Oklahoma

Trial judge: Wayne E. Alley

Case No.: CIV-94-69-A

Citations: None.

Date filed: January 13, 1994

Dates tried: March 6-10, 1995

Date closed: December 17, 1996

The party I represented: The defendant, Eagle Snacks, Inc., a subsidiary of Anheuser-Busch, Inc.

Co-counsel: Mark R. McPhail, Spradling, Alpern, Friot & Gum, L.L.P., 101 Park Avenue, Suite 700, Oklahoma City, OK 73102. Telephone: (405) 272-0211.

Principal counsel for each of the other parties: Richard M. Klinge, 510 E. Memorial Road, Suite C-1, Oklahoma City, OK 73114. Telephone: (405) 775-9000.

Nature of my participation in the litigation: Lead counsel for the defendant.

Summary of the substance of the case: The plaintiff, Don Knight, asserted that the defendant, Eagle Snacks, Inc., had tortiously interfered with Knight's contractual rights in wrongfully terminating an independent operator agreement under which Knight distributed Eagle's products (mostly

potato chips) to grocery stores. The jury returned a verdict in favor of the defendant, Eagle Snacks, Inc. Eagle was awarded \$9,157 in costs against the plaintiff.

Final disposition of the case: No appeal was filed. Satisfaction of the judgment for costs was filed on December 17, 1996.

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Name of case: *Walter E. Looney and Virginia Looney v. Cessna Aircraft Company*

Court: United States District Court for the Western District of Arkansas

Trial judge: Morris S. Arnold

Case No.: CIV-89-2295

Citations: None.

Date filed: December 21, 1989

Dates tried: June 27 - July 3, 1990

Date closed: October 1, 1990

The party I represented: The defendant, Cessna Aircraft Company

Co-counsel: Larry G. Ball, Spradling, Alpern, Friot & Gum, L.L.P., 101 Park Avenue, Suite 700, Oklahoma City, OK 73102. Telephone: (405) 272-0211.

Principal counsel for each of the other parties: William P. Thompson and James M. "Mitch" Llewellyn, Jr., Thompson and Llewellyn, P.O. Box 818, Fort Smith, AR 72902. Telephone: (501) 785-2867.

Nature of my participation in the litigation: Lead counsel for the defendant.

Summary of the substance of the case: This was a product liability case in which the plaintiff was rendered a quadriplegic as a result of the crash of the Cessna 210 single-engine airplane which he was piloting. We defended both on liability and on the basis that the plaintiff would not have been rendered a quadriplegic if he had been wearing his shoulder harness as required by Federal Aviation Regulations. Plaintiff's theory, which the jury credited, was that the aircraft encountered fuel starvation even though it had sufficient fuel on board to complete the flight. The jury returned a verdict for the plaintiff in the amount of \$2 million.

Final disposition of the case: The judgment was settled on appeal and the appeal was dismissed on October 1, 1990. No appellate decision was handed down.

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Name of case: *Lee Majors and Ray Davis v. Vaughn Good, et al.*

Court: District Court of Garfield County, Oklahoma

Trial judge: Richard W. Pickens

Case No.: C-84-1142, C-84-1458, C-84-1459

Citations: *Majors v. Good*, 832 P.2d 420 (Okla. 1992).

Date filed: October 4, 1984 (Case No. 1142) and December 18, 1985 (Case No. 1458 and 1459)

Dates tried: May 16-26, 1989

Date closed: May 26, 1992 (affirmance of judgment on appeal)

The parties I represented: The plaintiffs, Lee Majors and Ray Davis

Co-counsel: E. Evans Chambers III, P.O. Box 3532, Enid, OK 73702. Telephone: (580) 242-0522

Principal counsel for each of the other parties: Stephen Jones, Jones & Wyatt, A P.A., P.O. Box 472, Enid, OK 73702-0472. Telephone: (580) 242-5500.

Nature of my participation in the litigation: Lead counsel for the plaintiffs

Summary of the substance of the case: The plaintiffs, Lee Majors (the actor) and Ray Davis (an Enid, Oklahoma businessman), sued Enid businessman Vaughn Good (and his wife, Laura Good) for fraud and breach of fiduciary duty, arising from the defendants' misappropriation of the assets of three drilling companies in which they induced the plaintiffs to make substantial investments. The jury returned verdicts in favor of the plaintiffs.

Final disposition of the case: On appeal, the Supreme Court of Oklahoma held that Oklahoma's statutory cap on punitive damages could not be retroactively applied to this case, but that the plaintiffs were not entitled to recover prejudgment interest.

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Name of case: *Quail Springs Plaza Limited Partnership, et al., Plaintiffs v. Quail Springs Associates, Ltd., Defendant*

*v. Western Development Corporation, Additional Counterclaim Defendant*

Court: United States District Court for the Western District of Oklahoma

Trial judge: Ralph G. Thompson

Case No.: CIV-85-2782-T

Citations: None. (Judgment was affirmed by the United States Court of Appeals for the Tenth Circuit in an unpublished opinion in Case No. 88-1931.)

Date filed: January 18, 1985 (transfer from U.S.D.C., D.C.)

Dates tried: February 5-18, 1988

Date closed: June 14, 1990 (filing of release of judgment)

The parties I represented: The plaintiff, Quail Springs Plaza Limited Partnership and the Third Party Defendant, Western Development Corporation

Co-counsel: F. Anthony Zahn, 4702 Harned Court, Bartlesville, OK 74005. Telephone: (918) 331-9743.

Principal counsel for each of the other parties: Harry A. Woods, Crowe & Dunlevy, 1800 Mid America Tower, Oklahoma City, OK 73102. Telephone: (405) 235-7754.

Nature of my participation in the litigation: Lead counsel for the plaintiff and the third party defendant

Summary of the substance of the case: This was an action brought by Quail Springs Plaza Limited Partnership against Quail Springs Associates, Ltd. for specific performance of a contract to purchase and sell real property. The defendant counterclaimed for slander of title and brought in a third-party defendant on the counterclaim. The plaintiff's claim was resolved in favor of the defendant on motion for partial summary judgment. The slander of title claim went to jury trial, resulting in a verdict against the defendant and the third-party defendant in the amount of \$1,044,496.23.

Final disposition of the case: The judgment was satisfied after the appellate proceedings were concluded.

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Name of case: *Superior Air Parts, Inc. and Mid-States Aircraft Engines, Inc. v. Gould Inc.*

Court: District Court of Oklahoma County, Oklahoma

Trial judge: John M. Amick

Case No.: CJ-92-987

Citations: None.

Date filed: February 3, 1992

Dates tried: December 13-21, 1993

Date closed: July 12, 1994

The party I represented: The defendant, Gould Inc.

Co-counsel: Mark R. McPhail, Spradling, Alpern, Friot & Gum, L.L.P., 101 Park Avenue, Suite 700, Oklahoma City, OK 73102. Telephone: (405) 272-0211.

Principal counsel for each of the other parties: For Superior Air Parts: J. Michael Bean, Maloney, Bean and Horn, 102 Decker Drive, Suite 200, Irving, TX 75062, Telephone: (972) 281-2900, and B.J. Cooper, P.O. Box 1336, Oklahoma City, OK 73101, Telephone: (405) 232-0355. For Mid-States Aircraft Engines, Inc.: D. Craig Johnston (now a judge on the Oklahoma Workers' Compensation Court), 1915 N. Stiles Avenue, Oklahoma City, OK 73105, Telephone: (405) 522-8600.

Nature of my participation in the litigation: Lead counsel for the defendant, Gould Inc.

Summary of the substance of the case: This case was a sequel to a product liability case in which a substantial payment was made to the occupants of a Cessna 182 aircraft as a result of the failure of one of the pistons in the engine. After the underlying personal injury case was settled, Superior Air Parts, Inc. and Mid-States Aircraft Engines, Inc., respectively the distributor of the piston and the last overhauler of the engine, sued Gould Inc., the manufacturer of the defective piston. Gould defended on the basis that, although the piston was defective, it was defective because the design provided by Superior was defective. The jury agreed and returned a verdict in favor of Gould. A very similar failure in another accident resulted in a trial of substantially identical issues between Superior and Gould in New York State. The parties were represented by the same counsel (Mr. Bean for Superior and the undersigned for Gould). Despite the significant similarities between the two cases, the New York jury returned a different verdict, allocating 75% of the fault to Gould and 25% of the fault to Superior.

Final disposition of the case: The case was settled on appeal and the appeal was dismissed.

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Name of case: *Maralyn Vanderburg v. Dayton Hudson Corporation d/b/a Target Stores, John Walker and Pat Burns*

Court: United States District Court for the Western District of Oklahoma

Trial judge: Timothy D. Leonard

Case No.: CIV-93-1223-L

Citations: None.

Date filed: July 9, 1993

Dates tried: June 20-27, 1994

Date closed: January 20, 1995

The party I represented: The defendant, Dayton Hudson Corporation d/b/a Target Stores

Co-counsel: Mark R. McPhail, Spradling, Alpern, Friot & Gum, L.L.P., 101 Park Avenue, Suite 700, Oklahoma City, OK 73102. Telephone: (405) 272-0211.

Principal counsel for each of the other parties: Gregory L. Maguire (believed to be deceased), counsel for the plaintiff.

Nature of my participation in the litigation: Lead counsel for the defendant.

Summary of the substance of the case: Plaintiff, a middle management employee at a Target store in Oklahoma City, brought suit against Target (Dayton Hudson Corporation d/b/a Target Stores), alleging that she had been repeatedly passed over for promotion due to her age and sex. She also asserted a retaliation claim. Because the 1990 amendments to Title VII became effective during the period which was relevant to plaintiff's claims, some of her claims were triable to the court and some of her claims were triable to the jury. The jury returned a verdict in favor of Target. Judge Leonard later handed down a memorandum opinion resolving the non-jury claims in favor of Target.

Final disposition of the case: The judgment for Target became final without appeal. Costs in the amount of \$8,760.24 were taxed against the plaintiff, resulting in her filing a petition in bankruptcy in March, 1995.

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Name of case: *White Stripe Pipe Inspection, Inc., Plaintiff v. Apache Corporation, Defendant v. Danny Merz, Additional Counterclaim Defendant*

Court: United States District Court for the Western District of Oklahoma

Trial judge: David L. Russell



Case No.: CIV-83-1759-R

Citations: None.

Date filed: July 22, 1983 (petition for removal)

Dates tried: October 29 - November 1, 1984

Date closed: June 29, 1989 (filing of release of judgment as to Danny Merz)

The party I represented: The defendant and counterclaim plaintiff Apache Corporation

Co-counsel: None

Principal counsel for each of the other parties: John T. Edwards, Monnet, Hayes, Bullis, Thompson and Edwards, 1719 First National Center, Oklahoma City, OK 73102. Telephone: (405) 232-5481.

Nature of my participation in the litigation: Counsel for the defendant and counterclaim plaintiff Apache Corporation

Summary of the substance of the case: This case was filed as an open account action against our client, Apache Corporation. Apache had suspended payment of billings rendered by the plaintiff, White Stripe Pipe Inspection Company because Apache suspected that White Stripe had been suborning the loyalty of Apache's drilling foremen by paying them cash kickbacks and providing them with illegal drugs and the services of prostitutes. White Stripe and the third-party defendant Danny Merz (White Stripe's president and principal owner) counterclaimed for defamation, alleging that they had been slandered by Apache during the course of Apache's investigation. At trial, the court granted Apache a directed verdict on the slander claim and submitted the commercial bribery claim to the jury. The jury returned a verdict in favor of Apache and against White Stripe and Mr. Merz for actual and punitive damages for commercial bribery.

Final disposition of the case: The appeal filed by White Stripe and Merz was dismissed and the judgment in favor of Apache was eventually partially satisfied.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I represented two advisory directors of Penn Square Bank in the litigation which resulted from the failure and closing

of Penn Square Bank in July, 1982. This included numerous civil actions, as well as representation at hearings conducted by the House Banking Committee in Oklahoma City in August, 1982. See H. Rep. 97-92, Hearings Before the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives (97<sup>th</sup> Congress, 2d Session). The civil litigation was brought principally by Penn Square Bank depositors and the Federal Deposit Insurance Corporation. See, e.g., *Professional Asset Management, Inc. v. Penn Square Bank, N.A., et al.*, 566 F.Supp. 134 (W.D. Okla. 1983); *Professional Asset Management, Inc. v. Penn Square Bank, N.A., et al.*, 607 F.Supp. 1290 (W.D. Okla. 1985); and *Professional Asset Management, Inc. v. Penn Square Bank, N.A., et al.*, 616 F.Supp. 1418 (W.D. Okla. 1985).

In 1994 through 1996, I represented United Technologies Corporation (Pratt & Whitney Aircraft Division) in a "toxic tort" action filed by 329 present and former production workers at the Oklahoma City Air Logistics Center at Tinker Air Force Base. As against Pratt & Whitney, a manufacturer of commercial and military jet engines, the plaintiffs alleged that Pratt & Whitney had failed to warn them as to the physiological effects of degreasers and other solvents which were used in the jet engine overhaul processes at the Air Logistics Center. This case afforded me an opportunity to learn about the Oklahoma City Air Logistics Center, both historically and on a current basis.

In April, 1997, the Insurance Commissioner of the State of Oklahoma initiated statutory rehabilitation proceedings against Mid-Continent Life Insurance Company, a life insurance company domiciled in Oklahoma. *State of Oklahoma ex rel. Crawford v. Mid-Continent Life Insurance Company*, Case No. CJ-97-2518, D.C. Okla. County, Okla. As a proceeding ancillary to the rehabilitation proceeding, the Insurance Commissioner filed a civil action for damages against officers and directors of the life insurance company and its parent corporation, Florida Progress Corporation. I represented the directors of Florida Progress Corporation in the Commissioner's civil action and in a related class action, *Farrimond v. Mid-Continent Life Insurance Company, et al.*, Case No. CJ-99-130, D.C. Okla. County, Okla. The class action was certified and then settled (along with the related rehabilitation proceedings and the ancillary damage suit which was prosecuted by the Insurance Commissioner) in February, 2001.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have been a partner in the law firm now known as Spradling, Alpern, Friot & Gum, L.L.P. since February 1, 1975. Under our partnership agreement, I will, upon my withdrawal from the partnership, be entitled to receive payments representing (i) return of capital, and (ii) recompense for fees receivable and unbilled work in progress on the books of the partnership as of the date of my withdrawal. I will not be entitled to any pension payments, payment for good will, or other payment or remittances of any kind. My withdrawal will effect a complete severance of my partnership relationship with the firm. The firm's last partnership distribution to me (for the period ending with the last day of the month in which I withdraw from the firm) will be shown on a final form K-1.

Aside from the arrangements described above, I am neither a party to, nor do I anticipate receiving any benefits from, any financial arrangements, stock options, deferred compensation agreements, future benefits or other continuing relationships. All of my client relationships will be terminated as of the date of my withdrawal from Spradling, Alpern, Friot & Gum, L.L.P.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Under Canon 3(C)(1) of the Code of Conduct for United States Judges, I will be required to disqualify myself in any proceeding involving any of the companies in which I own common stock.

Under Canon 3(C)(1), I will also be required to disqualify myself in any matter in which I or one of my former

colleagues at Spradling, Alpern served as a lawyer while I was at Spradling, Alpern. I believe that, given my personal circumstances, this standard is not sufficiently stringent. In view of (i) the relatively small size of Spradling, Alpern (with the resultant exceptionally close personal and professional relationships) and (ii) the length of my professional association with my colleagues at Spradling, Alpern, I am of the opinion that I should, for a reasonable period of time, disqualify in any matter involving my former firm, regardless of whether the matter was pending prior to my withdrawal from the firm.

It is my understanding that the Clerk of the United States District Court for the Western District of Oklahoma has in place a mechanism for identification of cases involving litigants whose presence may require disqualification.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? No. If so, explain. N/A.
4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached copy of my AO-10 Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See the financial statement attached hereto.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

The following summary does not include matters in which my only involvement was as a contributor:

Gene Mathews for District Judge, 1986, 1990 and 1994. I was active in the judicial election campaigns of Eugene H. Mathews in 1986 and 1990. I was the campaign treasurer in 1994.

Oklahomans Against the Lottery, 1994. In 1994, I was active

in opposing a referendum proposal for an Oklahoma lottery. I sent a letter explaining my views to every practicing lawyer in Oklahoma County. The postage was paid by Oklahomans Against the Lottery, an organization in which I was active at a fairly low level.

Frank Keating for Governor, 1994. I hosted an attorneys' reception for gubernatorial candidate Frank Keating in early 1994.

Oklahomans Against Casinos, 1995. I was active, albeit at a fairly low level, in Oklahomans Against Casinos in 1995. This referendum, had it been successful, would have legalized casino gambling in Oklahoma.

Bill Burkett for District Judge, 1998. I was the treasurer of this campaign.

Frank Keating for Governor, 1998. I hosted an attorneys' reception for gubernatorial candidate Frank Keating in early 1998.

Bush-Cheney 2000. I was the Oklahoma co-chairman of Lawyers for Bush-Cheney 2000.

AO-10 (w)  
Rev. 1/2000

# **FINANCIAL DISCLOSURE REPORT** **Nomination Report**

*Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)*

<b>1. Person Reporting</b> (Last name, first, middle initial) Friot, Stephen P.	<b>2. Court or Organization</b> District Court - W.D. of Okla.	<b>3. Date of Report</b> 08/06/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)	<b>5. Report Type (check type)</b> X Nomination, Date 08/02/2001 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 08/01/2001
<b>7. Chambers or Office Address</b> 101 Park Avenue, Suite 700 Oklahoma City, OK 73102-7283		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>
<b>Reviewing Officer</b>		<b>Date</b>

*IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.*

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Spradling, Alpern, Friot & Gum, L.L.P.
2 Trustee	Oklahoma Housing Finance Agency
3 Director	Central Oklahoma Habitat for Humanity, Inc.

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2001	Spradling, Alpern, Friot & Gum, L.L.P. - See Explanatory Comments.
2 2001	KEOGH/401(K) Plan - See Explanatory Comments.
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouses)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	Spradling, Alpern, Friot & Gum, L.L.P.	\$186,359
2 2000	Spradling, Alpern, Friot & Gum, L.L.P.	\$220,051
3 2001	Spradling, Alpern, Friot & Gum, L.L.P.	\$124,000 (est.)
4 1999	Westminster School	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Friot, Stephen P.	08/06/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE	DESCRIPTION
<input checked="" type="checkbox"/> X	NONE (No such reportable reimbursements.)	
1		
2		
3		
4		
5		
6		
7		

**V. GIFTS**
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input checked="" type="checkbox"/> X	NONE (No such reportable gifts.)		
2			
3			

**VI. LIABILITIES**
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1	Charles Schwab & Co., Inc.	Margin Account	K
2			
3			
4			
5			

\* VAL CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Priot, Stephen P.		Date of Report 08/06/2001	
<b>VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period		D. Transactions during reporting period	
Place "X" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value/Gain Code (J-P)	(4) Identity of buyer/seller Code (A-H)	(5) (if private transaction)	
NONE (No reportable income, assets, or transactions.)					
1 Rental Prop, OKC, OK	C	Rent	K	W	Exempt
2 Local Federal Bank	A	Interest	J	T	Exempt
3 Transocean Common	A	Dividend	J	T	Exempt
4 Deere & Co. Common	A	Dividend	J	T	Exempt
5 Schlumberger Common	A	Dividend	J	T	Exempt
6 CMI Corp Common	A	Dividend	J	T	Exempt
7 Medtronic Common	A	Dividend	L	T	Exempt
8 Compaq Common	A	Dividend	J	T	Exempt
9 Intel Common	A	Dividend	M	T	Exempt
10 Oracle Common	A	Dividend	J	T	Exempt
11 Am. Cent Ultra Fund	A	Dividend	J	T	Exempt
12 Wm Blair Growth Fund	A	Dividend	J	T	Exempt
13 Templeton Growth Fund	B	Dividend	J	T	Exempt
14 Salomon S-B IRA - SPF					
15 --Transocean Common	A	Dividend	J	T	Exempt
16 --At Home Common	A	Dividend	J	T	Exempt
17 --Comcast Common	A	Dividend	J	T	Exempt
<b>1</b> Ino/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
<b>2</b> Val Mth Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					



FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Priot, Stephen P.		Date of Report 08/06/2001	
<b>VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
Place "X" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value Gain Code (J-P)	(4) Value Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)					
18 --Corus Ent. Common	A	Dividend	J	T	Exempt
19 --Cox Comm. Common	A	Dividend	J	T	Exempt
20 --Schlumberger Com.	A	Dividend	J	T	Exempt
21 --Shaw Comm. Common	A	Dividend	J	T	Exempt
22 --Aim Constellation Fnd	C	Dividend	J	T	Exempt
23 --EuroPacific Growth Fnd	A	Dividend	K	T	Exempt
24 --Hancock Strategic Inc	A	Dividend	J	T	Exempt
25 --S-B International	B	Dividend	J	T	Exempt
26 Salomon S-B IRA - NRF					
27 --Transocean Common	A	Dividend	J	T	Exempt
28 --At Home Common	A	Dividend	J	T	Exempt
29 --Comcast Common	A	Dividend	J	T	Exempt
30 --Corus Ent. Common	A	Dividend	J	T	Exempt
31 --Cox Comm. Common	A	Dividend	J	T	Exempt
32 --Schlumberger Com.	A	Dividend	J	T	Exempt
33 --Shaw Comm. Common	A	Dividend	J	T	Exempt
34 --Aim Constellation Fnd	C	Dividend	J	T	Exempt
I Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 Col. B1, D4    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more					
J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 Col. C1, D3    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market Col. C2    U=Book Value    V=Other    W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Friot, Stephen P.		Date of Report 08/06/2001	
<b>VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
Place "00" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value Gain Code: (J-P)	(4) Value Gain Code: (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)					
35 --EuroPacific Growth Fnd	A	Dividend	K	T	Exempt
36 --Hancock Strategic Inc	A	Dividend	J	T	Exempt
37 --S-B International	B	Dividend	J	T	Exempt
38 ABRA (KEOGH/401(K))					
39 --Intermediate Bond		None	M	T	Exempt
40 --Balanced Fund		None	M	T	Exempt
41 --Growth Equity		None	M	T	Exempt
42 --T. Rowe Price Int. Stk	C	Dividend	K	T	Exempt
43 TIAR/CREF		None	L	T	Exempt
44					
45					
46					
47					
48					
49					
50					
51					
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000					
<b>2 Val Codes:</b> J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3 Val Mth Codes:</b> Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Friot, Stephen P.	Date of Report 08/06/2001
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# **VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

(Indicate part of report.)

Information continued from Part II - AGREEMENTS.

Explanation with respect to Part II, line 1 (agreement with Spradling, Alpern, Friot & Gum, L.L.P.): I am now a partner in the law firm of Spradling, Alpern, Friot & Gum, L.L.P. Before entering judicial office, I will withdraw as a partner in the firm. My withdrawal will effect a complete severance of my partnership relationship with the firm. Under our partnership agreement, I will, upon my withdrawal from the partnership, be entitled to receive payments representing (i) return of capital, and (ii) recompense for fees receivable and unbilled work in progress on the books of the partnership as of the date of my withdrawal. I will not be entitled to any pension payments, payment for goodwill, or other payment or remittances of any kind.

Explanation with respect to Part II, line 2 (KEOGH/401(K) Plan): I am a participant in the ABRA KEOGH/401(K) retirement plan. I plan to continue to hold this interest after I withdraw from Spradling, Alpern, Friot & Gum, L.L.P. Continuation as an ABRA participant will not require any continuing tie (financial, contractual or otherwise) with Spradling, Alpern, Friot & Gum, L.L.P. The plan does have an option for "self-directed" investments. My participation in the plan does include some self-directed investments. Upon entering judicial office, I intend to dispose of the self-directed investments so that, for reporting purposes, my interest in the ABRA retirement plan will be considered to be a "common trust fund."

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Friot, Stephen P.	Date of Report 08/06/2001
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# **SECTION HEADING.** (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## **PART 1. POSITIONS (cont'd.)**

Line	Position	Name of Organization/Entity
4	Director Legal Aid of Western Oklahoma, Inc.	
5	President Ruth Bader Ginsburg American Inn of Court	
6	Chairman Troop Committee, Troop 4, Last Frontier Council, Boy Scouts of America	

## **PART 3. NON-INVESTMENT INCOME (cont'd.)**

Line	Date	Source and Type	Gross Income
5	2000	Westminster School	
6	2001	Westminster School	

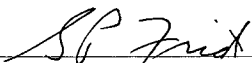
	Name of Person Reporting:	Date of Report
FINANCIAL DISCLOSURE REPORT	Priot, Stephen P.	08/06/2001

**IX. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

8/6/01

**Note:**

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

**FINANCIAL STATEMENT**

NET WORTH - May 29, 2001 (Amounts rounded to nearest dollar).

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$9,552	Notes payable to banks-secured	\$0
U.S. Government securities-add schedule	0	Notes payable to banks-unsecured	0
Listed securities-add schedule	402,173	Notes payable to relatives	0
Unlisted securities--add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	216
Real estate owned-add schedule	170,000	Unpaid income tax	0
Real estate mortgages receivable	0	Other unpaid income and interest	0
Autos and other personal property	57,000	Real estate mortgages payable-add schedule	53,164
Cash value-life insurance	179,174	Chattel mortgages and other liens payable	
Other assets itemize:		Other debts-itemize:	
KEOGH Retirement Plan	672,270	Margin debt (Charles Schwab) <sup>1</sup>	19,898
Law Firm Capital (Est.)	72,081		
TIAA/CREF Account (4/30/01)	64,150		
IRA Accts (Net of Listed Securities on Schedule B)	4,104		
Cash Value - Annuity	56,142		
		Total liabilities	73,278
		Net Worth	1,613,368
Total Assets	1,686,646	Total liabilities and net worth	1,686,646
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor <sup>2</sup>	75,939	Are any assets pledged? (Add schedule)	No
On leases or contracts	0	Are you defendant in any suits or legal actions?	No
Legal Claims	None	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	Current		
Other special debt	None		

SPFX007D - FIN STMT.DOC\SAFG\SPF

<sup>1</sup> Secured by listed securities worth \$85,089.24 at April 30, 2001.<sup>2</sup> This is the total amount of my law firm's bank loans (principally for acquisition of computers and telephone equipment).

Schedule AFinancial Statement of Stephen P. FriotCommon Stocks

<b>Name of Issuer</b>	<b>Number of Shares</b>	<b>Price at 5/25/01</b>	<b>Total</b>
At Home Corporation	100	\$4.74	\$474
CMI Corporation	375	1.99	746
Comcast Corporation	140	41.16	5,762
Compaq Computer Corp.	500	16.95	8,475
Corus Entertainment, Inc.	66	34.25	2,660
Cox Communications, Inc.	140	41.95	5,873
Deere & Co.	300	36.93	11,079
Intel Corporation	4,800	29.10	139,680
Medtronic, Inc.	1,280	42.50	54,400
Oracle Corporation	350	16.51	5,778
Schlumberger, Ltd.	350	64.06	22,421
Shaw Communications, Inc.	400	21.65	8,660
Transocean Sedco Forex, Inc.	67	54.40	3,645

Mutual Funds

<b>NAME OF FUND</b>	<b>AMOUNT (at 5/25/01)</b>
American Century Ultra Fund	\$10,219
William Blair Growth Fund	7,073
Templeton Growth Fund	13,413
Aim Constellation Fund	19,652
EuroPacific Growth Fund	33,729
Smith Barney International All Cap Growth	11,287
T. Rowe Price International Stock Fund	30,532
John Hancock Strategic Income A	6,615

Schedule B

Financial Statement of Stephen P. Friot

Real Estate Owned and Mortgage Debt

Our residence in Oklahoma City, Oklahoma is subject to a mortgage in the amount of \$53,164 in favor of Homeside Lending, Inc. The property is worth, conservatively, \$170,000.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In the last 29 years, there have been very few times that I have not had at least one pro bono matter pending. Set forth below is a list of some of the pro bono matters I have personally handled. This list is reasonably inclusive as to matters opened within the last ten years. Pro bono matters that I handled more than ten years ago are difficult to identify because, for the most part, all we have is file cards (rather than the actual files) on matters dating back that far. The file cards typically do not indicate whether the matter is a pro bono matter.

As indicated by the article attached hereto at Tab A, I was honored as the Legal Aid of Western Oklahoma/Oklahoma County Bar Association pro bono lawyer of the month in February, 1995.

I have served on the Board of Directors of Legal Aid of Western Oklahoma since 1995. I have also served twice as the Chair or Co-Chair of the annual Legal Aid of Western Oklahoma Lawyers' Fund Drive. These drives raised \$99,498 to support the operations of Legal Aid of Western Oklahoma.

In addition to the individual pro bono matters listed below, I have served as volunteer legal counsel for Central Oklahoma Habitat for Humanity, Inc. ("**Habitat**"). In that capacity, I have provided advice and representation to Habitat in a number of legal matters involving, by way of example, employment issues, purchases and sales of property, thrift store operations and real property tax exemption. In addition, I have served as an instructor in Habitat's Homeowner's College. The Homeowner's College is a series of classes for Habitat homeowners, in which Habitat homeowners are introduced to such subjects as their rights and responsibilities as homeowners, homeowner's insurance, financial management and related topics relevant to their new-found status as homeowners.

I have also served as a volunteer lawyer with Oklahoma Lawyers for Children, Inc. This organization provides legal counsel on a pro bono basis to assist the Oklahoma County



Public Defender in representing neglected and abused children in juvenile proceedings. I have represented six children in this capacity.

Individual pro bono matters (partial listing [see above]):

*Ella Bacy v. Jerrell Nathan Bacy*; District Court of Oklahoma County, Our file no. 1402/86-177

*Jewell D. Baez (a/k/a Jewell Boring) v. Ralph Baez*; District Court of Oklahoma County, Case No. FD-93-10312-42; Our file no. 2890/ 93-430

*Jewell Boring - State v. Ralph Baez*; District Court of Oklahoma County, Case No. CRF-97-4297; Our file no. 2890/ 93-430

*Lori Colbert - In the Matter of the Guardianship of Shauntay L. Colbert and Ronnie L. Colbert*; District Court of Oklahoma County, Case No. P-87-1845; Our file no. 2254/ 90-026

*Mary Lee Dewberry v. Henry Dewberry*; District Court of Oklahoma County, Case No. FD-94-3030-49; Our file no. 3232/ 94-170

*Mary Dewberry - United Companies Lending Corporation v. Henry Dewberry, et al.*; District Court of Oklahoma County, Case No. CJ-96-1149-61; Our file no. 3232/94-170

*Mary Dewberry - United Companies Lending Corporation v. Henry Dewberry and Mary Lee Dewberry*; District Court of Oklahoma County, Case No. CJ-92-9482; Our file no. 3232/ 94-170

*Tammy Edwards - State of Okla. ex rel. DHS, o/b/o Terry Darnell Hopkins, a minor child, by Tammy D. Edwards, mother v. Terry D. Hopkins (Paternity and Protective Order)*; District Court of Oklahoma County, Case No. FD-91-4822; Our file no. 2544/91-207

*Grace Garcia v. Joel Hernandez*; District Court of Cleveland County, Case No. FD-95-1513-C; Our file no. 3446/95-338

*In the Matter of the Hernandez Children*; District Court of Oklahoma County, Juvenile Division, Case No. JF-96-1189; Our file no. 3855/98-047

*Terri Kay Jackson v. James Ulysee Jackson*; District Court of Oklahoma County, Case No. JFD-86-6614; Our file no. 1493/ 86-474

*Theodorice M. Littles v. Lester Littles*; District Court of Oklahoma County, Case No. FD-95-6311-76; Our file no. 3437/ 95-323

*Connie Jo Lynch v. Robert Anthony Lynch*; District Court of

Oklahoma County, Case No. FD-95-6459-49; Our file no. 3447/95-339

*City of Oklahoma City v. Mayflower Community Church, et al.*; District Court of Oklahoma County, Case No. CJ-98-8389-66; Our file no. 2349/98-446

*Abdul Qawwiyy Abdullah Muhammad (Terry Bennett) v. Gary Maynard, et al.*; U.S.D.C. W.D. Okla., Case No. CIV-90-1330-T; Our file no. 2516/91-134 (case inherited from a departing partner)

*Colleen Petersen Ramsey v. Donnie Scott Ramsey (VPO)*; District Court of Oklahoma County, Case No. FD-87-3729; Our file no. 1874/88-186

*Joyce A. Randall v. Kevin A. Randall*; District Court of Oklahoma County, Case No. FD-94-2346-48; Our file no. 3212/94-133

*Latonya Scott Russell v. Michael LaRon Russell*; District Court of Oklahoma County, Case No. FD-2000-1003; Our file no. 4442/00-274

*Shirley Ann Wells v. James Stephen Wells*; District Court of Oklahoma County, Case No. FD-95-6406-58; Our file no. 3444/95-337

My community service activity has also included involvement with Troop 4, Boy Scouts of America (Assistant Scoutmaster and Troop Committee Chairman), and Last Frontier Council, Inc., Boy Scouts of America (Advancement and Recognition Chairman).

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I have never belonged to an organization which discriminates on the basis of race or religion. The only single-sex organizations with which I have been associated have been Boy Scouts of America and my college social fraternity. I do not believe that these two organizations are within the contemplation of this inquiry.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe

your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No selection commission was established with respect to the vacancy for which I have been nominated. Early this year, I met separately with Senators Nickles and Inhofe to discuss the possibility that I might be recommended for nomination to serve as a District Judge. On February 8, 2001, Senator Nickles informed me that he had decided to make a recommendation to President Bush that I be nominated. In May, 2001, I was interviewed at the White House by individuals in the White House counsel's office. Following this interview, I was requested to, and did, compile and send a considerable amount of personal data to the Justice Department. In addition, I completed a form Standard Form 86 for the Federal Bureau of Investigation. This was followed by a field investigation by the FBI and an interview with an attorney at the Department of Justice. President Bush made the nomination on August 2, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? No. If so, please explain fully. N/A.
5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Response:

Federal district courts are courts of limited jurisdiction. In this respect, federal courts differ from state trial courts of general jurisdiction, in that state trial courts of general jurisdiction typically have unlimited original jurisdiction of all justiciable matters. Moreover, within the federal system, the federal courts constitute but one branch of the three coordinate branches established by the Constitution - the other two branches being answerable to the electorate. Even where a case is within the statutory subject matter jurisdiction of a federal district court, the court must, under Article III, decline to proceed unless it is satisfied that (i) the plaintiff has standing to assert the claims presented, and (ii) the claims are ripe for adjudication. If the prerequisites for statutory jurisdiction, standing and ripeness are satisfied, the federal district court must still, under the doctrine of *stare decisis*, faithfully apply the rules of decision as established by appellate courts. Collectively, these constitutional and prudential limitations substantially confine the permissible scope of the application of judicial power by the federal district courts.

Senator SCHUMER. Thank you, Mr. Friot.  
Finally, Mr. Hicks.

**STATEMENT OF LARRY R. HICKS, NOMINEE TO BE DISTRICT  
JUDGE FOR THE DISTRICT OF NEVADA**

Mr. HICKS. Thank you, Senator Schumer, Senator Kennedy and Senator DeWine. From a personal standpoint, I obviously thank you for your consideration in continuing with this hearing under circumstances which obviously were not convenient. But I think, more importantly, I salute you for getting on with the business of Government under these circumstances. I speak on behalf of all my family and friends when I say your actions in continuing this hearing today are deeply appreciated.

It is my pleasure to introduce my family who are here today: my wife of 36 years, Marianne. Would you stand, please?

My brother, Don, standing back here with the camera—He is the cameraman in the family—and his wife, Judy, over here. And I have to say that my other brother, Bud, would have been here but for the uncertainties of yesterday in the travel schedule from the West. And he and his wife, Suzette, both would have been here and are sad not to be here.

I also very much appreciate that two of my law partners from Nevada have attended this proceeding today, Mr. Bill Magrath, who is the partner in the next-door office to me in my office in Reno, and Mr. Brian Clark, who is a partner in the Las Vegas section of our office. And I am honored that these men would travel this great distance to be here for this hearing.

Thank you very much.

[The biographical information of Mr. Hicks follows.]

LARRY R. HICKS

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Larry Richard Hicks
2. Address: List current place of residence and office address(es).  
  
Residence: Reno, Nevada  
  
Office: McDonald Carano Wilson McCune Bergin  
Frankovich & Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, Nevada 89505-2670
3. Date and place of birth.  
December 13, 1943; Evanston, Illinois 5X
4. Marital Status (include maiden name of wife). List spouse's occupation, employer's name and business address(es).  
  
Married. My wife is Marianne Hicks, formerly Avansino. Homemaker.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and date degrees were granted.  
  
University of Nevada, Reno - 9/61 to 6/65, B.S. degree in Business Administration (6/65);  
University of Colorado Law School - 9/65 to 6/68, J.D. degree (6/68).
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
06/66-08/66 Summer Law Clerk, Washoe County District Attorney's office, Courthouse, Reno, Nevada  
  
06/67-08/67 Summer Law Clerk, Washoe County District Attorney's office, Courthouse, Reno, Nevada  
  
08/68-10/68 Law Clerk, Washoe County District Attorney's Office, Courthouse, Reno, Nevada

10/68-01/71 Deputy District Attorney, Criminal Division,  
Washoe County District Attorney's Office,  
Courthouse, Reno, Nevada

01/71-10/71 Asst. Chief Deputy District Attorney, Criminal  
Division, Washoe County District Attorney's  
Office, Courthouse, Reno, Nevada

10/71-09/74 Chief Deputy District Attorney, Criminal  
Division, Washoe County District Attorney's  
Office, Courthouse, Reno, Nevada

09/74-11/74 Acting District Attorney, Washoe County  
District Attorney's Office, Courthouse, Reno,  
Nevada

11/74-12/74 Chief Deputy District Attorney, Washoe County  
District Attorney's Office, Courthouse, Reno,  
Nevada

01/75-12/78 District Attorney, Washoe County, Courthouse,  
Reno, Nevada

01/79-Present Partner: McDonald Carano Wilson McCune Bergin  
Frankovich & Hicks LLP  
241 Ridge Street, Fourth Floor,  
P. O. Box 2670, Reno, Nevada 89501

Directorship and Officer Positions - all nonprofit entities:

1987-Present Director, Stillwater Farms, Inc., a Nevada  
corporation, and Canvasback Gun Club.  
Stillwater Farms, Inc. owns & operates a 5,700  
acre ranch in Churchill County, Nevada.  
Canvasback Gun Club is a private hunting club  
that leases the hunting rights on the  
Stillwater Farms' property.

1995-Present Director, Nevada Bighorns Unlimited  
Secretary, 1999-present.  
Nevada Bighorns Unlimited is a non-profit  
sportsmen's and sportswomen's organization in  
Nevada.

7. Military Service: Have you had any military service? If so,  
give particulars, including the dates, branch of service, rank  
or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I have not received any scholarships, fellowships, honorary degrees or honorary society memberships. I have received two awards for outstanding service from the State Bar of Nevada for my work in unauthorized practice of law matters. ✓

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Nevada State Bar Association ✓  
 President, 1993-1994  
 Vice-President, 1992-1993  
 Bar Governor, 1988-1994  
 American Bar Association  
 Delegate from State of Nevada, 1994-2000  
 American Inns of Court (Bruce R. Thompson Chapter)  
 President, 1999-2000 ✓  
 Vice President, 1998-1999  
 Program Chair, 1997-1998  
 American College of Trial Lawyers  
 Washoe County Bar Association  
 Association of Trial Lawyers of America  
 Nevada Trial Lawyers Association  
 International Association of Gaming Attorneys.  
 Nevada State District Attorneys' Association (1968-1978)  
 President, 1977-1978 ✓  
 Vice President, 1976-1977  
 National District Attorneys' Association (1968-1978)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The following organizations to which I belong are believed to lobby before public bodies: Nevada State Bar Association, American Bar Association, Association of Trial Lawyers of America, Nevada Trial Lawyers Association, The International Association of Gaming Attorneys, Rocky Mountain Elk Foundation and Ducks Unlimited.

The other organizations to which I belong that have not previously been listed are:

Trinity Episcopal Church



Reno Philharmonic  
Prospectors Club  
Nevada Waterfowl Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Nevada, 1968  
United States District Court for the District of Nevada, 1968  
United States Supreme Court, 1978  
United States Court of Appeals, Ninth Circuit, 1986

I have also been admitted to practice before the Superior Court of the State of California through pro hoc vice applications in several litigated matters.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

The published material I have written is found in the various president's pages I wrote as a president of the Nevada State Bar in 1993-1994. I list them in the order I consider most significant:

A View from the Top - "Your License to Practice Law is not Expensive, It's Priceless", Nevada Lawyer, Vol. I, No. 12, December 1993;

A View from the Top - "Opinion on the Whitehead/Judicial Discipline Commission Controversy, Nevada Lawyer, Vol. II, No. 2, February 1994;

A View from the Top - "Stress Relief - A Nevada Experience", Nevada Lawyer, Vol. II, No. 4, April 1994;

A View from the Top - "Controversial, Thought-Provoking and One of the Best Trial Lawyers in America", Nevada Lawyer, Vol. II, No. 5, May 1994;

A View from the Top - "Two Sensitive but Unrelated Issues: Discipline and Certification of Specialization", Nevada Lawyer, Vol. I, No. 10, October 1993;

A View from the Top - "Bar Exam Numbers Fall in 1993", Nevada Lawyer, Vol. I, No. 11, November 1993;

A View from the Top - "Next Year's Convention - The Wine Country and the Ferrari-Carano Vineyards and Winery", Nevada Lawyer, Vol. I, No. 8, August 1993;

A View from the Top, Nevada Lawyer, Vol. I, No. 7, July 1993;

A View from the Top, Nevada Lawyer, Vol. II, No. 6, June 1994;

Larry Hicks - a Profile, Nevada Lawyer, Vol. I, No. 9, September 1993.

In my response to question 19 in this section, (Section I - Biographical Information) relative to legal activities, I commented on having served as an instructor at local police academies, instructing on criminal law at the Nevada Judges' College and appearing as a speaker before the International Association of Chiefs of Police. All of these presentations occurred during my tenure in the District Attorney's office in the 1970's. I have not retained any copies, outlines or materials from any of them.

In the same portion of the questionnaire, I identified having served as a presenter, lecturer and panelist on a number of seminars and programs presented by the Nevada State Bar and one with the American Inns of Court program in 1999. There are written materials that I have retained from most of these presentations. However, the materials were not written by me. My role was primarily one of gathering the materials and using them for reference. I did not author anything in connection with these programs.

13. Health: What is the present state of your health? List the date of your last physical examination.

The present state of my health is excellent. I have a permanent disability of my left leg due to a nerve injury. This disability would not interfere with judicial responsibilities or functions. My last physical examination was in June 2001. ✓

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Settlement Judge, Nevada Supreme Court, 1997-Present.  
Appointed by Nevada Supreme Court. The Nevada Supreme Court has required settlement conferences on all appeals to the Court.

15. Citations: If you are or have been a judge, provide: (1) citations for the 10 most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

06/66-08/66 Summer Law Clerk, Washoe County District Attorney's Office, Courthouse, Reno, Nevada 89501. Position appointed by District Attorney.

06/67-08/67 Summer Law Clerk, Washoe County District Attorney's Office, Courthouse, Reno, Nevada 89501. Position appointed by District Attorney.

08/68-10/68 Law Clerk, Washoe County District Attorney's Office, Courthouse, Reno, Nevada 89501. Position appointed by District Attorney.

10/68-01/71 Deputy District Attorney, Criminal Division, Washoe County District Attorney's Office, Courthouse, Reno, Nevada 89501. Position appointed by District Attorney.

01/71-10/71 Assistant Chief Deputy District Attorney, Criminal Division, Washoe County District

Attorney's Office, Courthouse, Reno, Nevada 89501. Position appointed by District Attorney.

10/71-09/74 Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney's Office, Courthouse, Reno, Nevada 89501. Position appointed by District Attorney.

09/74-11/74 Acting District Attorney, Washoe County, Courthouse, Reno, Nevada 89501. Appointed by Washoe County Board of County Commissioners.

01/75-01/79 District Attorney, Washoe County, Courthouse, Reno, Nevada 89501. Elected position.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; Not applicable.
2. whether you practice alone, and if so, the addresses and dates; Not applicable.
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

08/68-10/68 Law Clerk, Washoe County District Attorney's office, 75 Court Street, Reno, Nevada 89501

In this position, I researched and wrote legal memorandums concerning issues raised in pending criminal cases. I also researched and wrote proposed drafts of legal briefs for the District Attorney's office.

10/68-01/71 Deputy District Attorney, Criminal Division, Washoe County District Attorney's office, 75 Court Street, Reno, Nevada 89501

In this position, I was a trial deputy in the Criminal Division of the office. As such, I was responsible for prosecuting misdemeanor

and felony criminal cases from the time of the receipt of the investigative reports from local law enforcement agencies through judge and jury trial in the trial court. I also appeared regularly before the Washoe County Grand Jury and presented criminal cases for indictment.

01/71-10/71

Asst. Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney's office, 75 Court Street, Reno, Nevada 89501

As Assistant Chief Deputy, I served in supervisory and training capacities over six to eight Deputy District Attorneys. Additionally, I served as the prosecuting attorney on major felony prosecutions which included murder, robbery, rape, drug and burglary prosecutions.

I also appeared regularly before the Washoe County Grand Jury and presented criminal cases for indictment as well as matters for investigation by the local Grand Jury.

10/71-09/74

Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney's office, 75 Court Street, Reno, Nevada 89501

I supervised and trained 9 to 12 deputies in the Criminal Division of the District Attorney's Office. In addition, I had primary prosecutorial responsibility for numerous murder, robbery, rape, drug and other major felony prosecutions.

I also appeared regularly before the Washoe County Grand Jury and presented criminal cases for indictment as well as matters for investigation by the local Grand Jury.

I also briefed and argued several appeals in major criminal cases which were appealed to the Nevada Supreme Court.

10/74-01/79

District Attorney, Washoe County, 75 Court Street, Reno, Nevada 89501

During the period of my office as District Attorney, we served a community of

approximately 170,000 people with an extensive tourist population and economy. The Washoe County District Attorney's Office was the Public Prosecutor for all felony offenses committed within the County and all misdemeanor offenses committed within the County and outside the incorporated cities of Reno and Sparks.

The District Attorney also served as legal counsel to the Washoe County Commission and all county departments.

The District Attorney's staff consisted of approximately 20 deputies, approximately 75% of whom were assigned to the Criminal Division and 25% of whom were assigned to the Civil Division. Other staff consisted of an estimated 50 personnel.

As head of the office, my responsibilities were primarily supervisory although I personally prosecuted and tried several major murder prosecutions in the trial court.

01/79-Present Partner: McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP, 241 Ridge Street, Fourth Floor, P. O. Box 2670, Reno, Nevada 89505-2670

My legal experience has focused upon litigation and serving as general counsel to business clients and associations. I have served as the Chairman of the Litigation Section of this law firm since 1985, a statewide firm of approximately 34 lawyers. I have also been active in the recruitment and training of the associates of the law firm and have been active in the management of the firm since joining it in 1979.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From 1979 to present, the general character of my law practice has been in the field of litigation and serving as counsel to business clients and associations. My litigation experience has focused upon business

LARRY R. HICKS

litigation, personal injury, insurance law and appellate law.

From 1968 to 1979, I served in the Washoe County District Attorney's office (Reno-Sparks, Nevada) as a Trial Deputy, Chief Criminal Deputy and District Attorney. My responsibilities focused upon misdemeanor and felony prosecutions, trial practice, appellate practice, and supervision of attorneys involved in the same.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical former clients over the past 22 years have been local and national businesses and personal injury clients. I have also served as general counsel to the Reno-Sparks Association of Realtors since 1980 and to the Washoe County Teachers Association. I have specialized in commercial litigation, personal injury and insurance law. \*

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

In private practice, I have appeared in court frequently although most civil litigation has settled prior to trial. I appeared in court constantly while employed in the District Attorney's office.

- c. 2. What percentage of these appearances was in:

(a) federal courts;	25% est.
(b) state courts of record;	65% est.
(c) other courts.	10% est.

3. What percentage of your litigation was:

In the last 10 years:

(a) civil;	98%
(b) criminal.	2%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled),

LARRY R. HICKS

indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried over 60 cases to verdict in courts of record. I was sole counsel in over 50 trials, chief counsel in several and associate counsel in several.

5. What percentage of these trials was:

- (a) jury; 85% est.
- (b) non-jury. 15% est.

18. Litigation: Describe the 10 most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) CONFORTE GRAND JURY INVESTIGATION AND REPORT.

- (a) Date of representation: 1976-1979
- (b) Name of court and judges before whom pending:  
Second Judicial District Court of the State of Nevada. Judges William N. Forman and John W. Barrett, both Retired.
- (c) Names, addresses and telephone numbers of co-counsel and principal counsel for other parties:

The brothel owner, Joseph Conforte, was represented by:



LARRY R. HICKS

Stanley H. Brown, Sr. (Retired)  
147 E. Liberty St.  
Reno, NV 89501  
Telephone: (775) 322-0606,

and his son, Stanley H. Brown, Jr.  
403 Flint Street  
Reno, NV 89501  
Telephone: (775) 323-6193

Counsel for Biglieri was:

Wallace D. Stephens  
401 Ryland St., Ste. 330  
Reno, NV 89502  
Telephone: (775) 786-5776

My Chief Deputy who was assigned direct responsibility in this matter was:

Calvin R. X. Dunlap  
537 Ralston Street  
P. O. Box 3689  
Reno, Nevada 89505-3689  
Telephone: (775) 323-7790

- (d) Citations or Case No.:  
In re Report Washoe Co. Grand Jury, 95 Nev. 121,  
590 P.2d 622 (1979) and Biglieri v. Washoe Co.  
Grand Jury, 95 Nev. 696, 601 P.2d 703 (1979).

Capsule Summary:

The Conforte Grand Jury investigation and report culminated a 20-month investigation by the District Attorney's Office, law enforcement agencies and the local Grand Jury. The investigation focused upon city councilmen, county commissioners and a state senator in connection with a transaction wherein a Nevada brothel owner purchased several hundred acres of ranch land and sold approximately two-thirds of it to the local convention authority for development as a golf course. Development of the golf course greatly enhanced the value of the surrounding property retained by the brothel owner. Estimates were that he was likely to receive over \$1 million in profits.

The investigation uncovered and reported on the following:

LARRY R. HICKS

(a) That two city councilmen and one county commissioner, two of whom were on the local convention authority which purchased the golf course property, regularly visited the brothel owner's brothel and received complimentary food, drink and services of prostitutes;

(b) That the real estate office of a city councilman who voted for a room tax increase necessary for the convention authority to fund the property purchase received a \$40,000 sales commission in the underlying ranch property sale;

(c) That a state senator received an \$18,000 sales commission from the ranch property sale. The senator had rendered no services in the transaction and his commission was pursuant to the direction of the brothel owner. The senator subsequently opposed a bill in the state legislature which would have enlarged the governing body of the Convention Authority which purchased and developed the golf property;

(d) That the brothel owner, a twice convicted felon, had become sufficiently involved in the affairs of local public officials that he had made recommendations to council members for the appointment of Reno's police chief, salary increases for a municipal judge, recommended appointments of city council members to certain committees and had provided prostitutes at a private party for local public officials.

The Grand Jury's 45-page report was filed on March 15, 1976. Although the entirety of the report was challenged in the state trial court and the state Supreme Court, only three small portions of the report were stricken and the substance of the report was upheld.

Significance. This was an extensive investigation into misconduct by public officials serving in every local governing body in the Reno area. It represented the joint efforts of the District Attorney's office, the Grand Jury and the local Sheriff's office. As District Attorney, I monitored and sanctioned the actions which were underway throughout the investigation and assisted in editing and drafting of the Grand Jury's report.

The challenges to the Grand Jury report were heard before The Honorable William N. Forman, and John W. Barrett, both now retired, Judges of the Second Judicial District Court of Washoe County, Nevada.

LARRY R. HICKS

- (2) HERB HALLMAN CHEVROLET, INC., a Nevada corporation, and JOHN P. STANKO, Plaintiffs, vs. DOROTHY NASH-HOLMES, individually and in her official capacity as District Attorney for Washoe County, DONALD COPPA, individually and in his official capacity as Assistant District Attorney for Washoe County, KARL HALL, individually and in his official capacity as Assistant District Attorney for Washoe County, FRANK D. LANDES, individually and in his official capacity as Investigator with the Washoe County Office of the District Attorney, JOHN J. LONG, individually and in his official capacity as Investigator with the Washoe County Office of the District Attorney, MICHAEL NEVILLE, individually and in his official capacity as Investigator with the Washoe County Office of the District Attorney, and WASHOE COUNTY, a political subdivision of the State of Nevada, Defendants,

and

JERRY VAN DER HOEVEN, JAMES BAYUS, STAN BONDICK, CRAIG CONRAD, TOM GEORGE, RON HALL, JOHN JULIAN, JUDY LIMON, DAN MAHONEY, EDWARD J. MATTS, RON SHERK, GREG STEARD, ALEX VARGO and CLIFFORD SOUZA, Plaintiffs, vs. DONALD COPPA, individually and in his official capacity as Assistant District Attorney for Washoe County, et al., Defendants.

- (a) Date of representation: 1995-1999
- (b) Name of court and judges before whom pending:  
Hallman Case - U.S. District Court, District of Nevada, Judge David W. Hagen;  
  
Van Der Hoeven Case - U.S. District Court, District of Nevada, Judge Howard D. McKibben.
- (c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:  
  
Defendants/Appellees, excluding County of Washoe, were represented by:

LARRY R. HICKS

Larry R. Hicks, Esq.  
Paul J. Georgeson, Esq.  
McDonald Carano Wilson McCune Bergin Frankovich  
& Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, NV 89505-2670  
Telephone: (775) 788-2000

County of Washoe was represented by:

Melanie D. Foster  
Deputy District Attorney  
District Attorney's Office  
195 N. Sierra Street  
P.O. Box 11130,  
Reno, NV 89520  
Telephone: (775) 328-3400

Plaintiffs were represented by:

Jeffrey A. Dickerson, Esq.  
10100 Old Virginia Road  
Reno, NV 89511  
Telephone: (775) 786-6664

Dickerson was primary counsel throughout all federal district court proceedings, and was actively involved in appeal to Ninth Circuit.

Argued the appeal by Plaintiffs/Appellants before the Ninth Circuit Court:

Nathan Z. Dershowitz, Esq.  
Dershowitz and Eiger, P.C.  
350 Fifth Avenue, Suite 7912  
New York, NY 10118  
Telephone: (212) 967-0667

Hallman Chevrolet was represented by:

Bruce Laxalt, Esq.  
Laxalt & Nomura, Ltd.  
50 W. Liberty St., Ste. 700  
Reno, NV 89501  
Telephone: (775) 322-1170

LARRY R. HICKS

James Bayus was represented by:

C. Frederick Pinkerton, Esq.  
203 S. Arlington Avenue  
Reno, NV 89501  
Telephone: (775) 322-7553

- (d) Citations or Case No.:  
169 F.3d 636 (1999), and cert. denied, 528 U.S. 870  
(1999)

Capsule Summary:

This was a § 1983 civil rights action brought by an automobile dealership, its owner and 14 salesmen/employees against the Washoe County District Attorney, certain deputy prosecutors and investigators and the County arising from an ill-fated Grand Jury investigation and criminal prosecution on an 81-count felony indictment charging the dealership, its owner and salesmen with 409 felony offenses. The indictment followed a one-year Grand Jury investigation into alleged fraudulent business practices involving conversion of automobile sales rebates, conversion of down payments, fraudulent lease transactions and fraudulent warranty sales. The civil rights lawsuit was filed after the state trial court dismissed the indictment based upon findings of prosecutorial abuse. The dealership and other defendants sought over \$12 million in damages in the civil rights action. I was counsel for the prosecutors and the investigators. The County was represented by a member of the District Attorney's office.

This case involved over two years of extensive discovery, depositions and motion practice. In the last motions before trial, the court granted summary judgment in favor of all defendants upon grounds of qualified and absolute immunity. The trial court's decision was appealed to the Ninth Circuit Court of Appeals and in a published opinion, the Ninth Circuit Court upheld the dismissal of the action although it set aside an award of attorney's fees in favor of my clients and the County.

This case and the Ninth Circuit's opinion, dealt with and established to a large extent the law of qualified and absolute immunity available to Nevada prosecutors and their investigators in the course of a criminal investigation and prosecution. The court analyzed the challenged conduct of the prosecutors and investigators, found that there was probable cause to support their challenged actions, found that their

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conduct did not constitute intentional misconduct and concluded that they were entitled to the qualified immunity which is available to public officers in criminal investigations. On the issue of the absolute immunity available to prosecutors, the court found that probable cause existed prior to the institution of the Grand Jury proceedings and that the District Attorney prosecutors and investigators were immune from suit based upon grounds of both qualified and absolute immunity.

The automobile dealership, its owner and salesmen applied for certiorari to the United States Supreme Court, which application was denied on October 4, 1999.

(3) THE DOW CHEMICAL COMPANY, Defendant-Appellant and Cross-Respondent vs. CHARLOTTE MAHLUM and MARVIN S. MAHLUM, Plaintiffs-Respondents and Cross-Appellants.

- (a) Date of representation: 1997-1999
- (b) Name of court and judges before whom pending:  
Nevada Supreme Court; Justices Robert E. Rose, William A. Maupin, Miriam Shearing, Charles E. Springer, and the Honorable Jack Ames, by appointment
- (c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:

Appellant/Cross-Respondent, The Dow Chemical Co., was represented by:

Larry R. Hicks, Esq.  
Thomas R. C. Wilson, Esq.  
McDonald Carano Wilson McCune Bergin Frankovich  
& Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, NV 89501  
Telephone: (775) 788-2000

Michele L. Odorizzi, Esq.  
Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, IL 60603  
Telephone: (312) 701-7309

LARRY R. HICKS

Respondents & Cross-Appellants, Charlotte Mahlum  
and Marvin S. Mahlum were represented by:

Geoffrey White, Esq.  
White & Meany  
3185 Lakeside Drive  
Reno, Nevada 89509  
(775) 828-9999

Frederic L. Ellis, Esq.  
Ellis & Rapacki  
85 Merrimac Street, Suite 300  
Boston, MA 02114  
(617) 523-4800

Ernie Hornsby, Esq.  
Farmer, Price, Hornsby & Weatherford  
P.O. Drawer 2228  
Dothan, AL 36302  
(334) 793-2424

Amicus Curiae Chamber of Commerce of the United  
States was represented by:

Thomas J. Hall, Esq.  
305 S. Arlington Avenue  
P. O. Box 3948  
Reno, NV 89505-3948  
Telephone: (775) 348-7011

Robin S. Conrad, Esq.  
V.P., National Chamber Litig. Ctr., Inc.  
U.S. Chamber of Commerce  
Washington, D.C.

Amicus Curiae Product Liability Advisory Council,  
Inc. was represented by:

Perry & Spann  
6130 Plumas Street  
Reno, NV 89509  
Telephone: (775) 829-2002

Hugh F. Young, Jr.  
Reston, Virginia

LARRY R. HICKS

Jordan B. Cherrick, Esq.  
Jennifer S. Lohman  
Armstrong, Teasdale, Schlafly & Davis  
St. Louis, MO

Amicus Curiae Pharmaceutical Research and  
Manufacturers of America were represented by:

Richard W. Horton, Esq.  
Lionel, Sawyer & Collins  
50 W. Liberty St., #1100  
Reno, NV 89501  
Telephone: (775) 788-8666

Bruce N. Kuhlik, Esq.  
Covington & Burling  
1210 Pennsylvania Avenue N.W.  
Washington, DC 20004-2401

Amicus Curiae American Tort Reform Association was  
represented by:

Casey W. Vlautin, Esq. (Deceased)  
Woodburn and Wedge  
6100 Neil Road, #500  
P. O. Box 2311  
Reno, NV 89505-2311  
Telephone: (775) 688-3000

Amicus Curiae Washington Legal Foundation was  
represented by:

Lynn G. Pierce  
Attorney at Law, Ltd.  
521 Gordon Avenue  
Reno, NV 89509  
Telephone: (775) 785-9100

Amicus Curiae Nevada Trial Lawyers Association was  
represented by:

Galatz, Earl & Bulla  
710 S. Fourth Street  
Las Vegas, NV 89101  
Telephone: (702) 386-0000



LARRY R. HICKS

(d) Citations or Case No.:

*The Dow Chemical Company vs. Charlotte Mahlum, et al.*, 114 Nev. 1468, 970 P.2d 98 (1998), rehearing denied, 115 Nev. 13, 973 P.2d 842 (1999).

Capsule Summary:

This action involved an appeal to the Nevada Supreme Court from Nevada's only case involving a jury's verdict for personal injuries resulting from allegedly defective breast implants. I was one of approximately five attorneys who represented the Dow Chemical Company in this appeal. The appeal was significant at state and national levels relevant to defective breast implant cases against Dow Corning and Dow Chemical Company. At trial, the Nevada jury awarded the plaintiffs, Mr. and Mrs. Mahlum, who claimed a multitude of personal injuries to Mrs. Mahlum arising from allegedly defective breast implants, over \$4,150,000 in compensatory damages and \$10 million in punitive damages. My firm was not involved in the trial.

My firm and I were retained by Dow Chemical to join the legal team for purposes of the appeal of the trial verdict to the Nevada Supreme Court. On appeal, and in a lengthy decision with a lengthy dissenting opinion, the Nevada Supreme Court affirmed the compensatory damage award but set aside the \$10 million award in punitive damages. The Court held that while the evidence supported the jury's finding that defective implants had proximately caused the plaintiff's injuries and that there was liability for compensatory damages upon a negligence theory, there was either no or insufficient evidence to support any findings of fraudulent or intentional conduct by Dow Chemical. There being no evidence of intentional torts, the Nevada Supreme Court vacated the \$10 million punitive damage award.

(4) STATE OF NEVADA, Plaintiff vs. RICHARD E. MELLO and ROBERT J. MAGINNIS, Defendants.

(a) Date of representation: 1975-1977

(b) Name of court and judges before whom pending:  
Second Judicial District Court of the State of Nevada, Judge James J. Guinan, Retired.

LARRY R. HICKS

- (c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:

The State of Nevada was represented by:

Larry R. Hicks

Defendant, Robert J. Maginnis, was represented by:

Richard J. Legarza, Esq.  
1105 Terminal Way, Ste. 301  
Reno, Nevada 89502  
Telephone: (775) 688-2559

Defendant, Richard E. Mello, was represented by:

Kent R. Robison, Esq.  
Robison, Belaustegui, Robb & Sharp  
71 Washington Street  
Reno, Nevada 89503  
(775) 329-3151

H. Dale Murphy (deceased)  
Washoe County Public Defender

- (d) Citations or Case No.:

*Robert J. Maginnis and Richard E. Mello v. State of Nevada*, 93 Nev. 173 (1977)

Capsule Summary:

This was a four-week double murder trial against two defendants who were charged with the murder of the wife and son of the former Mayor of Reno. Both died of multiple gunshot wounds to the head in December 1974.

This was a complex murder trial that involved the presentation of over 30 witnesses to a Reno jury. The state's evidence showed that the defendants had gone to the former Mayor's home to acquire weapons and money from his 23-year-old son. An argument ensued between the son and the defendants and the son was shot. The father and mother were upstairs and the mother heard some of the commotion from the lower level of the home. As she went to the top of the stairs to inquire, one of the defendants bounded up the stairs and shot her repeatedly in the face. The former Mayor found his wife dying in the hallway but never saw the assailants.

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The three defense attorneys challenged the sufficiency of the state's evidence and suggested that the murders were committed by either the former Mayor or unknown third parties.

At the conclusion of the three and one-half week trial, the jury found both defendants guilty of first degree murder and they were subsequently sentenced to life imprisonment without possibility of parole. The death penalty was not available in Nevada at the time.

Significance. This was a highly sensationalized murder trial. It involved the frightening scenario of a double murder of a mother and son by strangers in the victims' home in an exclusive residential neighborhood. It occurred the week before Christmas and there were no eye witnesses.

(5) ROGER S. BYERS, Plaintiff v. FIRE INSURANCE EXCHANGE, Defendant.

- (a) Date of representation: 1984-1986
- (b) Name of court and judges before whom pending:  
Second Judicial District Court of the State of Nevada, Judge James J. Guinan, Retired.
- (c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:

Plaintiff, Roger S. Byers, was represented by:

Larry R. Hicks, Esq.  
McDonald Carano Wilson McCune Bergin Frankovich  
& Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, NV 89501  
Telephone: (775) 788-2000

Defendant, Fire Insurance Exchange, was represented by:

Don Nomura, Esq.  
Laxalt & Nomura  
One East Liberty Street, Ste. 500  
Reno, Nevada 89501  
(775) 322-1170

LARRY R. HICKS

- (d) Citations or Case No.:  
Second Judicial District Court of Nevada, Case No.  
84-8226

Capsule Summary:

This was a tort action brought by an insured against his insurance carrier. The plaintiff was a disabled engineer who suffered from Multiple Sclerosis and whose home was severely damaged by fire in September 1983. Investigation disclosed that the fire had probably been started by neighborhood boys.

Over the 10-month period which followed the fire, the lack of significant payment of policy benefits by his insurance carrier had rendered Byers destitute and living with his son in a camper-truck parked behind the fire-damaged, uninhabitable and unrepaired home. A friend recommended he seek legal counsel and he was referred to me.

Discovery during the course of the lawsuit disclosed the following:

The insured's policy included coverage for additional living expense for comparable housing during repair of the fire damaged home. The insured was advanced \$1,000 for purposes of purchasing a pickup truck camper in which to live behind his house. He lived in the camper with his son for nearly four months when weather and deteriorating health compelled him to move into an apartment. The insurance carrier paid for one month of the apartment rental and thereafter refused to pay any further rental. The insured moved back into the camper when warmer weather arrived.

The policy provided fire insurance upon the dwelling. Bids completed within one month of the fire confirmed that the loss exceeded the policy limits. However, the insurance carrier withheld the payment of policy benefits for more than five months while it challenged benefits under another portion of policy coverage. When payment was made, the insured was underpaid by several thousand dollars due to mathematical errors by the insurance carrier.

The insurance carrier spent over three months disputing relatively minor portions of lost and destroyed property claims. When payments were made, the insurance carrier underpaid the policyholder by over \$6,500 due to mathematical errors and other neglect.

LARRY R. HICKS

When the insured learned that benefits which the carrier was willing to pay for lost contents was nearly \$10,000 less than expected, he returned the \$23,000 payment draft and requested the carrier to reconsider coverage on certain property which had been excluded. Although the adjuster represented that he would return the draft to the Regional Office and seek a different ruling on the coverage, he placed the draft in the file and forgot about it. When he discovered his error four months later, he then wrote a letter to the insured explaining that the company had decided to stand on its original decision and returned the draft to the insured.

This litigation was not settled until the morning of trial. At that time, the insurance carrier agreed to a confidential settlement in a major amount.

Significance. At the time of the settlement, there had been limited success in northern Nevada in plaintiff's litigation in which the conduct of an insurance carrier was challenged. I believe the settlement was then, and may be now, one of the largest settlements in an insurance action in northern Nevada.

(6) ESTATE OF EVELYN JENSEN, FRANCES DAVIS, and BRETT L. JENSEN, individually, and as former Guardians of Evelyn Jensen, Plaintiffs, vs. MANORCARE HEALTH SERVICES, Defendant.

- (a) Date of representation: 1999 to present
- (b) Name of court and judges before whom pending:  
Second Judicial District Court of the State of Nevada, Judge James W. Hardesty.
- (c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:

Plaintiffs, Estate of Evelyn Jensen, Frances Davis and Brett L. Jensen, were represented by:

Larry R. Hicks, Esq.  
McDonald Carano Wilson McCune Bergin Frankovich  
& Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, NV 89501  
Telephone: (775) 788-2000

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Defendant, ManorCare Health Services, was  
represented by:

Alice G. Campos-Mercado, Esq.  
Leigh T. Goddard  
Lemons, Grundy & Eisenberg  
6005 Plumas St., Ste. 300  
Reno, NV 89509  
(775) 786-6868

(d) Citations or Case No.:  
Second Judicial District Court of Nevada, Case No.  
CV99-03962

Capsule Summary:

I represented the plaintiffs in this action consisting of the Estate of Evelyn Jensen, a deceased 81-year-old woman who was a resident of ManorCare Health Services (hereafter "ManorCare") and her adult children, Frances Davis and Brett Jensen. The Jensen suit alleged tort and contract claims against ManorCare arising from the failure of ManorCare to notify family members during the time of Mrs. Jensen's illness leading to her death.

Mrs. Jensen was in poor health and needed 24-hour care. Her family selected ManorCare in late October 1998 because they understood that ManorCare was one of the best 24-hour care facilities in the area. Mrs. Jensen was the matriarch of the family and although she was in failing health and suffering from senility, she was very close to her family and her family was very close to her. In ManorCare's admission application, the family listed Mrs. Jensen's daughter, son, grandson and nephew for contact in case of emergency. Addresses and phone numbers were given for each person. Two months after Mrs. Jensen's admission, she became seriously ill, vomited blood, passed out temporarily and began asking for her family. This occurred in the early evening hours. ManorCare attempted to telephone Mrs. Jensen's daughter but the daughter was not at home. Instead of going on to attempt to call the other family members listed for emergency contact, ManorCare simply left messages on the daughter's phone recorder. Mrs. Jensen's condition deteriorated over the evening and she was taken by ambulance to the hospital shortly after 1:00 a.m. Once again, ManorCare called the daughter's phone recorder but made no attempt to locate or telephone the other family members who had been listed. Mrs. Jensen was asking for her family members throughout the evening and her

daughter's presence was very important to her. Mrs. Jensen died approximately four hours after arrival at the hospital of severe gastrointestinal bleeding. ManorCare made no attempt to contact the family after her death because administrators felt ManorCare had no further responsibility after Mrs. Jensen had been transferred to the hospital.

If ManorCare had attempted to contact the three remaining family members listed for emergency contact, two of them were at home and only minutes away from Mrs. Jensen. Additionally, those family members would have known how to contact and locate numerous other family members, including the daughter who received the recorded phone messages, and all family members would have been by Mrs. Jensen's bedside throughout the 10-12 hour period from when she first became ill until she died. As it was, the family members did not learn of Mrs. Jensen's illness and death until the daughter returned home the following evening and listened to the messages on her phone recorder. The last message was from a hospital doctor who, with both hesitation and apology, stated that Mrs. Jensen had been taken to the hospital and had died.

ManorCare contended that it had satisfied all legal obligations to Mrs. Jensen and her family and challenged whether Mrs. Jensen was capable of suffering significant emotional distress.

On conclusion of the trial, the jury returned verdicts in favor of Mrs. Jensen's estate in the amount of \$164,000, in favor of Mrs. Jensen's daughter in the sum of \$82,000 and against Mrs. Jensen's son. The judge allowed the jury to consider punitive damages in a second stage of the trial and it awarded an additional \$200,000 in punitive damages.

This was a significant case in the northern Nevada community because it recognized the duties of care to an elderly person in a convalescent home and also to that person's family.

- (7) THE ESTATE OF BRIAN J. DELMUE, AL L. DELMUE, and JEANIE DELMUE, Plaintiffs, vs. ALLSTATE INSURANCE COMPANY and DAVID A. BARKMAN, Defendants.

- (a) Date of representation: 1993-1997
- (b) Name of court and judges before whom pending:  
Nevada Supreme Court; Justices Robert E. Rose, Charles E. Springer, Miriam Shearing, William A. Maupin and Cliff Young.

LARRY R. HICKS

(c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:

Plaintiffs, Estate of Brian J. Delmue, Al L. Delmue and Jeanie Delmue, were represented by:

Larry R. Hicks, Esq.  
McDonald Carano Wilson McCune Bergin Frankovich  
& Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, NV 89501  
Telephone: (775) 788-2000

Defendants, Allstate Insurance Company and David A. Barkman, were represented by:

Scott A. Glogovac, Esq.  
Burton, Bartlett & Glogovac  
50 West Liberty Street, Ste. 650  
Reno, Nevada 89501  
Telephone: (775) 333-0400

Amicus Curiae Nevada Trial Lawyers Association was represented by:

Matthew L. Sharp, Esq.  
Leverty & Associates  
832 Willow Street  
Reno, NV 89502  
Telephone: (775) 322-6636

(d) Citations or Case No.:  
*The Estate of Brian J. Delmue, et al., vs. Allstate Insurance Company, et al.*, 113 Nev. 414 (1997), 936 P.2d 326

Capsule Summary:

This case involved an appeal to the Nevada Supreme Court of a decision by the trial court that underinsured motorist coverage was not available to my clients, the Delmue family. The case was based upon the very tragic circumstances of a fatal accident in which the 16-year-old son of Mr. and Mrs. Delmue was killed in a vehicle accident in Reno. The driver who was at fault in the accident was underinsured and the Delmue family looked to their own underinsured motorist coverage with Allstate Insurance Company for the coverage the



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family was due in excess of the at-fault driver's insurance limits.

At the time of the boy's death, his parents had included him and his brother as insureds under the family's car insurance, which included a \$1 million umbrella policy for personal liability. The Delmues' position was that Nevada law required Allstate to offer underinsured motorist coverage along with the \$1 million umbrella coverage it sold the Delmues. Allstate argued that it was not obligated to offer underinsured motorist coverage and denied the Delmues' claims for underinsured coverage under the umbrella policy. The trial court agreed with Allstate and granted summary judgment against the Delmue family. An appeal was taken to the Nevada Supreme Court.

In a precedent-setting decision, the Nevada Supreme Court held that Nevada insurance law did require automobile liability insurance carriers to offer underinsured motorist coverage up to the amount of the liability limits of any auto policy being sold. The Court further held that the Delmue family was entitled to the \$1 million umbrella coverage because the Court would imply the increased protection in a situation where the carrier had not offered such coverage.

The Nevada Supreme Court's decision was significant in that it required automobile insurers to offer underinsured motorist coverage with every umbrella insurance policy they sold for motor vehicle liability.

(8) Sandra Slawnik v. Washoe Co. School District.

- (a) Date of representation: 1986
- (b) Name of court and judges before whom pending:  
Second Judicial District Court of the State of Nevada
- (c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:

Plaintiff, Sandra Slawnik, was represented by:

LARRY R. HICKS

Larry R. Hicks, Esq.  
McDonald Carano Wilson McCune Bergin Frankovich  
& Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, NV 89501  
Telephone: (775) 788-2000

Defendant, Washoe Co. School District, was  
represented by:

C. Robert Cox, Esq.  
Walther, Key, Maupin, Oats, Cox,  
Klaich & LeGoy  
3500 Lakeside Court, Ste. 200  
P. O. Box 30000  
Reno, Nevada 89520  
Telephone: (775) 827-2000

- (d) Citations or Case No.:  
Second Judicial District Court of the State of  
Nevada, Case No. 84-7795, NERC #1007-81-197R, EEOC  
# [REDACTED] 451

This was a contested hearing brought before the Nevada  
Equal Rights Commission upon charges of sex discrimination  
resulting from the failure of the local school district to  
hire the complainant as vice principal of a middle school. I  
represented the complainant, Sandra Slawnik.

The underlying facts involved the appointment of a male  
teacher to the vice principal position upon the recommendation  
of the male principal of the school. The teacher was not as  
well qualified as Ms. Slawnik and it was evident that there  
may have been sexist favoritism involved in the selection of  
the male teacher. The school district's hiring procedures  
allowed the opportunity for abuses to occur.

A lengthy hearing was conducted before the Nevada Equal  
Rights Commission which resulted in a decision in favor of  
Ms. Slawnik holding that discriminatory practices had  
occurred. As a result of the decision, significant changes  
were made to the school district's hiring procedures which  
helped to eliminate gender and other bias in the hiring  
process. As a product of the settlement of this litigation,  
Ms. Slawnik was promoted to a high school vice-principalship  
and received substantial compensation and benefits.

LARRY R. HICKS

- (9) FARMERS GROUP, INC., Plaintiff vs. B.A.T. INDUSTRIES  
p.l.c., et al., Defendants,

and

BATUS, INC., et al., Counterclaimants vs. FARMERS GROUP,  
INC., et al., Counterclaim Defendants.

- (a) Date of representation: 1987-1988
- (b) Name of court and judges before whom pending:  
U.S. District Court, District of Nevada, Judge  
Howard D. McKibben.
- (c) Names, addresses and telephone numbers of co-  
counsel and of principal counsel for other parties:

Larry R. Hicks and Alvin J. Hicks, partners in the  
law firm of McDonald Carano Wilson McCune Bergin  
Frankovich & Hicks LLP, served as associate counsel  
to the following:

Latham & Watkins  
Hugh Steven Wilson, Esq.  
Marc W. Rappel, Esq.  
Irene Livadopoulos, Esq.  
555 S. Flower Street  
Los Angeles, CA 90071  
Telephone: (213) 485-1234

Cravath, Swaine & Moore  
Ronald S. Rolfe, Esq.  
Rory O. Millson, Esq.  
One Chase Manhattan Plaza  
New York, New York 10005  
Telephone: (212) 428-1000

In the associate counsel capacity, both my brother,  
Alvin J. Hicks, and I were present at all court  
proceedings, reviewed and edited all final  
pleadings, conducted independent research into  
substantive issues, and were particularly active in  
the litigation challenging the Nevada Takeover Act.

- (d) Citations or Case No.:  
Case No. CV-N-88-118-HDM; *Batus, Inc. vs. McKay*,  
684 Fed.Supp. 637 (1988).

LARRY R. HICKS

Capsule Summary:

This was an action involving the attempted takeover of Farmers Group, Inc., a major insurance conglomerate, by B.A.T. Industries p.l.c., BATUS, INC. and BATUS Financial Services, Inc. (collectively "BATUS").

The action was centered in Nevada because Farmers was a Nevada corporation. Although the takeover was ultimately unsuccessful due to protective measures and resulting market considerations, this was major litigation which attracted nationwide attention.

Included in the litigation was an action against certain Nevada law enforcement officials wherein BATUS successfully sought declaratory and injunctive relief against enforcement of certain provisions of Nevada's Takeover Act.

The Federal Court, in a published opinion, ruled that certain provisions of the Nevada Takeover Act were invalid because they were in conflict with Federal takeover legislation and were, therefore, in conflict with the Supremacy and Commerce Clauses of the Constitution.

Significance. This was a nationwide takeover battle and is the most significant takeover case which has been before a Nevada court. The Court's decision concerning Nevada's Takeover Act led to needed revisions in the Act.

(10) MADELINE GOODSSELL, ESTATE OF ROYAL GOODSSELL AND JOAN RAE MACK, Plaintiffs vs. FRANCOIS AWABDE AND NORTHWEST FARM BUREAU INSURANCE COMPANY, Defendants.

- (a) Date of representation: 1988-1991
- (b) Name of court and judges before whom pending:  
Second Judicial District Court of the State of Nevada, Judge Charles M. McGee.
- (c) Names, addresses and telephone numbers of co-counsel and of principal counsel for other parties:  
  
Plaintiffs, Madeline Goodsell, Estate of Royal Goodsell and Joan Rae Mack, were represented by:

LARRY R. HICKS

Larry R. Hicks, Esq.  
McDonald Carano Wilson McCune Bergin Frankovich  
& Hicks LLP  
241 Ridge Street, Fourth Floor  
P. O. Box 2670  
Reno, NV 89501  
Telephone: (775) 788-2000

Defendant, Northwest Farm Bureau Insurance Company,  
was represented by:

George W. Swainston, Esq.  
Erickson, Thorpe & Swainston, Ltd.  
99 W. Arroyo  
P. O. Box 3559  
Reno, Nevada 89505-3559  
Telephone: (775) 786-3930

Defendant, Francois Awabde, was represented by:

Robert L. Eisenberg, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Ste. 300  
Reno, Nevada 89509  
(775) 786-6868

(d) Citations or Case No.:  
Case No. CV89-1289

Capsule Summary:

This was a wrongful death, personal injury and insurance action which was settled shortly before trial involving issues of damages and the stacking of underinsured motorist coverage in personal automobile insurance policies.

Royal and Madeline Goodsell were an elderly Reno couple who were struck broadside by a drunken driver in a Reno intersection in November 1987. The husband died within two weeks of the accident and his wife was hospitalized for three and one-half months.

The drunken driver carried minimal insurance limits of \$30,000 but the Goodsell's carried three automobile insurance policies extending coverage on seven different automobiles.

Litigation was filed against the drunken driver and against the Goodsell's insurance carrier. The claim against the insurance carrier sought stacking of the Goodsell's underinsured motorist coverage.

Following discovery and the preparation of a lengthy Motion for Summary Judgment, the litigation was successfully

LARRY R. HICKS

settled for \$1,500,000 from the Goodsells' insurance carrier and \$30,000 from the insurer of the drunken driver.

Significance. The Goodsells' insurance carrier had only offered \$300,000 prior to litigation. It is believed that this settlement is one of the highest settlements involving stacked underinsured motorist coverage in the State of Nevada.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In 1997, I was appointed by the Nevada Supreme Court to serve as a settlement judge on appeals to the Court. This was part of a new program developed by the Nevada Supreme Court which requires that all Supreme Court appeals be submitted to a mandatory settlement conference before briefing and other time-consumptive activities.

I have presided over approximately 40 Supreme Court appeal settlement conferences and all but approximately 5 of the appeals have been successfully settled. This is indicative of the success of this program which has resulted in over 58% of all Supreme Court appeals being settled at settlement conference. This program has contributed greatly in reducing the caseload of the Nevada Supreme Court and is well accepted and respected by private litigants, their attorneys and the courts. I believe I am one of the most successful of the Court's settlement judges.

Other significant legal activities include the following:

While I was Chief Deputy District Attorney and District Attorney from 1971 until 1979, the District Attorney's Office jury trial conviction rates consistently ran higher than 80% and 90%. These conviction rates occurred in the course of at least several hundred jury trials in felony criminal cases. Not a single murder trial was lost. During the aforementioned period, there were approximately 20 attorneys on my staff and we enjoyed minimal attrition throughout the office.

As to my personal experience in the District Attorney's Office, I believe I had more jury trial experience in northern Nevada than any other Nevada attorney during the 1970's. I tried major felony jury trials, including cases of murder, robbery, rape and drug prosecutions, and won all but one of my jury trials.

LARRY R. HICKS

During my tenure as District Attorney, we developed a particularly successful consumer fraud program and consumer protection division. In addition to active investigation and prosecution of consumer fraud, one Deputy District Attorney was assigned to a consumer protection type of position in which he served as an advocate on behalf of consumers in utility rate hearings. This was a new concept at the time, the program achieved major successes before the Public Service Commission and our successes led to the creation of a statewide consumer advocate office which serves as a consumer representative in all utility rate hike matters today.

While in the District Attorney's Office, I was a regular instructor at the local police academies and also instructed on criminal law at the Nevada Judges College. I also appeared as a speaker before the International Association of Chiefs of Police.

I left the Washoe County District Attorney's Office in 1979 to accept a full partnership in my present law firm. I have been active in the management of the firm since joining it. The firm consists of 34 lawyers with offices in Reno and Las Vegas. It is one of the largest law firms in the state. As Chairman of the Litigation Section of the firm, I am directly or indirectly involved in almost all litigation undertaken by it. I am the partner who has been most involved in the recruitment, training and supervision of the law firm's associates.

I also spent an average of over 300 hours per year from 1988-1994 in volunteered service to the Nevada State Bar Association.

I was elected to three consecutive terms as a State Bar Governor and in 1993-1994 served as President of the Nevada State Bar.

Over the past 10 years, I have served as an alternate member to Nevada's Judicial Discipline Commission. I have also served as a presenter, lecturer and panelist on a number of seminars and programs presented by the Nevada State Bar. In 1999, the Inns of Court program presented by my mentor group won the award for best program of the year.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None, other than windup of my partnership interest in my law firm pursuant to the terms of the partnership agreement. The buyout of my interest in my law firm is determined by a formula which is summarized as follows: the total of my capital account, plus my equity interest (5.77%) in 50% of the three (3) year average of the Partnership's fees and costs receivable and its unbilled work in process. Payment may be amortized over four (4) years without interest.

I also hold a self-funded and fully vested interest in two profit sharing plans established through my law firm as reflected in my financial statement. The profit sharing plans are managed by the American Bar Association Members Retirement Program and controlled exclusively by me.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Potential conflicts of interest will concern matters in which my former law firm and its lawyers may be involved and matters involving clients represented by my former firm. Because my brother is a partner in the firm I will be disqualified from all matters involving the firm. All other matters will be screened through a list developed by the computerized conflict screening process used by my law firm. I will fully and diligently adhere to the requirements of 28 USC § 455 and the Code of Judicial Conduct for United States Judges.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so,



copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Financial Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1996, I served as the northern Nevada Campaign Chairman for Judge William A. Maupin, a candidate for the Nevada Supreme Court. Judge Maupin was successful in the campaign and presently serves as Chief Justice of the Nevada Supreme Court.

I have also served on the campaign committees for two northern Nevada trial court judges in the past six years, Judge Janet Berry who was re-elected and Judge Deborah Agosti who was re-elected. Judge Agosti has since gone on to the Nevada Supreme Court.

As a candidate for Washoe County District Attorney in 1974, I also was the principal person responsible for my campaign. There was a county-wide primary election in September 1974 and a general election in November 1974.

FINANCIAL STATEMENT  
LARRY R. HICKS  
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	99	750	Notes payable to banks-secured		
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
Listed securities-add schedule	53	860	Notes payable to relatives		
Unlisted securities--add schedule	50	000	Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	6	500
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule	226	267
Real estate owned-add schedule	1	150 000	Chattel mortgages and other liens payable	7	156
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	171	500			
Cash value-life insurance	7	500			
Other assets itemize:					
Partnership Interest-Law Firm	250	000			
Profit Sharing & 401K Plans-Law Firm	573	041			
IRA Accounts	35	809	Total liabilities	239	923
Partnership Interest-Avansino Realty Partners	385	000	Net Worth	2	536 537
Total Assets	2	776 460	Total liabilities and net worth	2	776 460
CONTINGENT LIABILITIES	(NONE)		GENERAL INFORMATION		
As endorser, cosmaker or guarantor			Are any assets pledged? (Add schedule)	No	
On leases or contracts			Are you defendant in any suits or legal actions?	No	
Legal Claims			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

LARRY R. HICKS

## ASSETS SCHEDULE

## LISTED SECURITIES

Boyd Gaming Corp. 500.000 shares	\$ 2,550
Harbor Fund 310.064 shares	9,230
MGM Mirage 726.000 shares	21,780
Zion's Bancorp 350.000 shares	<u>20,300</u>
TOTAL	\$ 53,860

## UNLISTED SECURITIES

Stillwater Farms, Inc. — 2 shares	50,000
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## REAL ESTATE OWNED

## Residence:

Reno, Nevada	650,000
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## Rental Property:

Reno, Nevada	250,000
Sparks, Nevada	<u>250,000</u>

TOTAL	\$1,150,000
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LARRY R. HICKS

**LIABILITIES SCHEDULE**

## REAL ESTATE MORTGAGES PAYABLE:

Citicorp Mortgage	\$195,253
Seven-Up Bottling Co. of Reno Profit Sharing Trust	<u>31,014</u>
TOTAL	\$226,267

<b>FINANCIAL DISCLOSURE REPORT</b> Calendar Year 2000		Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)	
1. Person Reporting (Last name, first, middle initial) Hi Larry R.		2. Court or Organization District Court - Nevada	
3. Date of Report 08/08/2001		4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)	
5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 8/02/01 Initial <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Final		6. Reporting Period 101/00 to 807/01	
7. Chambers or Office Address 243 Ridge Street, Fourth Floor P. O. Box 2670 Reno, NV 89505-2670		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			
<b>POSITIONS</b> (Reporting individual only; see pp. 9-13 of Instructions.)			
<input type="checkbox"/> NONE (No reportable positions.)		NAME OF ORGANIZATION / ENTITY	
1. Partner McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP		2. Director Stillwater Farms, Inc.	
3. Director and Secretary Nevada Bighorns Unlimited		4. _____ _____	
<b>AGREEMENTS</b> (Reporting individual only; see pp. 14-16 of Instructions.)			
<input type="checkbox"/> NONE (No reportable agreements.)		PARTIES AND TERMS	
2001 McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP - Will have continuing payments from law firm for buyout of partnership interest.		_____ _____	
<b>NON-INVESTMENT INCOME</b> (Reporting individual and spouse; see pp. 17-24 of Instructions.)			
<input type="checkbox"/> NONE (No reportable non-investment income.)		GROSS INCOME (yours, not spouse's)	
DATE 2001	SOURCE AND TYPE McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP	\$106,664	
2000	McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP	\$323,293	
2001	State of Nevada	\$ 1,445	
2000	State of Nevada	\$ 3,152	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hicks, Larry R.	06/08/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1		Exempt
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
1		Exempt	
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1			
2			
3			
4			
5			

\* VAL. CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Hicks, Larry R.		Date of Report 06/06/2001	
<b>VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					Exempt
1 Rental Property #1 Reno, NV	D	Rent	M	W	"
2 Rental Property #2 Sparks, NV	E	Rent	M	W	"
3 Avansino Realty Partners Ltd.	F	Rent	O	Q	"
4 Rental Property #3 Sparks, NV					
5 Rental Property #4 Sparks, NV					
6 Rental Property #5 Reno, NV					
7 Rental Property #6 Reno, NV					
8 Rental Property #7 San Francisco, CA					
9 Wells Fargo Bank - Account	D	Int	L	T	"
10 Boyd Gaming Corp - Common	A	Div	J	T	"
11 Harbor Fund	A	Div	J	T	"
12 MGM Mirage - Common	A	Div	K	T	"
13 Zion's Bancorp - Common	A	Div	E	T	"
14 Stillwater Farms, Inc. - Common		None	K	W	"
15 401K Plan	D	Div & Int	M	T	"
16 MGPIX					
17 COST					
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001 or more					
<b>2 Val Mth Codes:</b> J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000 S=\$50,000,001 or more					
<b>3 Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Hicks, Larry R.	Date of Report 06/08/2001
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					Exempt				
1 Rental Property #1 Reno, NV	D	Rent	M	W	"				
2 Rental Property #2 Sparks, NV	E	Rent	M	W	"				
3 Avansino Realty Partners Ltd.	F	Rent	O	Q	"				
4 Rental Property #3 Sparks, NV									
5 Rental Property #4 Sparks, NV									
6 Rental Property #5 Reno, NV									
7 Rental Property #6 Reno, NV									
8 Rental Property #7 San Francisco, CA									
9 Wells Fargo Bank - Account	D	Int	L	T	"				
10 Boyd Gaming Corp - Common	A	Div	J	T	"				
11 Harbor Fund	A	Div	J	T	"				
12 MGM Mirage - Common	A	Div	K	T	"				
13 Zion's Bancorp - Common	A	Div	E	T	"				
14 Stillwater Farms, Inc. - Common		None	K	W	"				
15 401K Plan	D	Div & Int	M	T	"				
16 MGFIX									
17 COST									

1 Inc/Gain Codes: A=\$1,000 or less (Col. C1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hicks, Larry R.	06/08/2001

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

*(Indicate part of report.)*

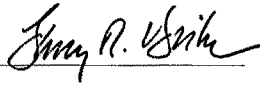
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hicks, Larry R.	06/08/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

8/09/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have provided legal services to disadvantaged persons throughout my civil practice career. In the following matters, I provided services which were generally far removed from my usual practice areas. I felt that the clients were disadvantaged and in need of legal services which I might be able to provide. The following legal services were provided:

Youth Equestrian Center. A local youth equestrian group asked if I would assist them in establishing a non-profit corporation to operate a youth equestrian center in a nearby community. I met with the directors and officers of the organization, reviewed their existing corporate structure, recommended and drafted certain amendments to perfect the non-profit incorporation of the youth center, prepared proposed bylaws for operation of the center, and prepared proposed resolutions by the directors and certificates to perfect the non-profit incorporation of the youth center. This was done without charge and required approximately 30-40 hours of my time.

McKay Will. An elderly lady recently requested my assistance with regard to an amendment of her Will. It was evident that this was a very sensitive issue to her and it also appeared that she needed an entirely new Will. She was unable to pay the normal attorney's fees which would be associated with what was effectively a new Will. I met with her, gathered all relevant information, prepared the new Will, conferred with her and the Will was executed. She was charged \$25 to cover overhead expenses of my office. This took only a few hours of my time but was very meaningful to this lady.

Industrial Injury Matter. A middle-aged man was referred to me who suffered a serious disability as a result of an industrial accident. During the course of the representation, it became evident that I would not be able to assist him with any civil claims in connection with his accident. However, it was also clear that he was facing the loss of industrial insurance benefits due in large part to his own lack of understanding of the requirements of the industrial insurance system. I assisted him in various ways to insure that his industrial benefits would continue. This required approximately 5-10 hours of my time.

Adoptions. In two separate recent instances, I was contacted by clients from families where there had been prior marriages.

In both cases, both the stepfather and the child desired that the stepfather be the adoptive parent. I provided all legal services necessary to achieve these adoptions. There were no charges for my services to either family. I estimate that I expended 10-20 hours in each of these matters.

Paternity Matter. I represented a young man in a matter of questioned paternity. I assisted him in recommending the necessary tests to confirm paternity and when paternity was confirmed, counseled him relative to his obligations as a parent. The father and his young son enjoy an outstanding father/son relationship today. I estimate that I expended at least 10-20 hours on this matter.

Family Property Dispute. I was contacted by a man and his wife regarding a serious property dispute with the man's father. It was evident that the couple were economically disadvantaged but I proceeded to provide representation without charge to them relative to their respective rights concerning the property in question. I believe the dispute has now been resolved within the family. I estimate that I expended 10-20 hours on this matter.

Property Rights Dispute. I provided services to a lady who was economically disadvantaged who had established property rights from an earlier divorce decree. I assisted her in perfecting those rights and insuring that her interests were fully protected in a pending sale of the property. There was no charge for my services. I estimate I expended 10-20 hours on this matter.

Name Change. I assisted a young couple who were economically disadvantaged and who were desirous of changing their name to the name of their family members who had provided them with the greatest family bonds and support. There was no charge for these services and I estimate I expended 5-15 hours on this matter.

Grandmother's Rights. I was contacted by an elderly lady who was very concerned about the welfare of her two grandchildren and her rights relative to the children's welfare. I researched the issue and outlined the rights which she might be able to use to assist her. There was no charge for my services and I estimate I expended at least 5-15 hours on this matter.

Eviction Problem. An elderly lady suffering from physical disabilities came into me concerning her landlord's attempts to evict her from her mobile home park. I interceded on behalf of the lady and was able to effectively dissuade the landlord from proceeding with eviction. This required approximately 10-20 hours of my time.

Remedies Pertaining to Disabled Child. I counseled the parents of a mentally handicapped child concerning actions

they might take relative to alleged abuse of the child by a staff member of the facility where the child resided. I estimate I expended 5-10 hours on this representation.

I have been the attorney in my law firm who has volunteered to assist staff employees in connection with legal claims resulting from automobile accidents and other mishaps. There has been no charge for my services. Although my services promoted positive good will for my firm, there was no direct financial advantage to me. I am the only partner, of 17 partners in this office, who provided this service. Examples include the following:

Automobile Accident involving Husband of Paralegal. I was able to successfully represent this employee and her husband in connection with an accident in which he was rather seriously injured. A sizeable recovery was obtained. I expended over 40 hours on this matter.

Secretary Slip and Fall. One of the secretaries in this office suffered a disabling injury as a result of being jumped on by an overly aggressive dog. This lady underwent expensive hospitalization and suffered from continuing disability as a result of her injuries. I was able to obtain a very important and sizable recovery for her. There were no charges for my services. I expended in excess of 40 hours on behalf of this employee.

Secretary Automobile Accident. Another secretary in this office suffered injuries as a result of a rear end accident which occurred while she was on her way to work. I successfully represented her in connection with her claims and estimate that I expended in excess of 30 hours on her behalf.

Secretary Automobile Accident. In another accident involving another staff employee in these offices, I am representing the employee in an attempt to achieve a settlement which will alleviate her strained financial circumstances. I estimate I have expended in excess of 15 hours in this representation.

Over the years I have provided other various pro bono legal services to disadvantaged persons who were involved in domestic relations matters, charged with lesser criminal offenses or involved in landlord and tenant disputes. I estimate that over the years I have expended an average of at least 20-30 hours per year in representing and assisting these types of clients.

I also take great pride in having been named and having served as a settlement judge for the Nevada Supreme Court. I receive only \$50 per hour for this service and serve as a settlement judge on all pending appeals to the Nevada Supreme Court which are assigned to me. I have served on approximately 40 settlement conferences and have achieved success in settling at least 35 of them. This has provided a valued service to the

litigants involved and to an overburdened Nevada Supreme Court.

As an active supporter of the Volunteer Lawyers of Washoe County, my law firm has pledged 10 hours of attorney time per year to pro bono matters for each attorney in the office. This amounts to over 200 hours of volunteer attorney time annually and we estimate that we are expending substantially greater time than pledged. My firm has received the following recent awards for its pro bono activities:

2001 Volunteer Lawyers of Washoe County -- "2001 Pro Bono Award for outstanding contribution of free legal services to the poor of Washoe County, Nevada."

2001 Washoe County Access to Justice Foundation Award to the "Pro Bono Law Firm of the Year." This award was given in recognition of "exemplary service to pro bono causes in Washoe County, Nevada."

1999 award by State Bar of Nevada -- "The Law Firm of the Year Award" for exemplified extraordinary service to the access to justice for all members of our society.

1999 award by State Bar of Nevada to the large Nevada law firm which has demonstrated unwavering commitment in devoting time and effort toward making the law work for everyone in the State of Nevada.

1997 award by State Bar of Nevada -- the large firm "Pro Bono Award for the State of Nevada."

The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Yes, I have been a member of the Prospectors' Club of Reno since 1984. Prospectors has never had any membership restrictions based upon race or religion; however, it did have a male only membership policy until September 1990. The Prospectors' Club is a social organization with a membership composed of business persons and professionals in northern Nevada. The male only policy was stricken in August 1990 as a result of an overwhelming vote by the membership. At the same time, membership qualifications were broadened to qualify

all citizens, regardless of gender. I voted for the policy change and was among those members who advocated the change. Today, there are 12-15 female members, 2 of whom serve as committee chairs. A cover letter from the Club Secretary and a copy of the organization's bylaws and membership qualifications is attached.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No.

In February 2001, I was contacted by Senator John Ensign's office and advised that I had been recommended for consideration for one of the two federal judgeships which had recently become available in Nevada. I was asked if I was interested in applying and responded that I was.

In late February 2001, a preliminary interview was conducted by Senator Ensign's Chief of Staff and in April 2001, I was invited to an interview with Senator Ensign. Prior to my interview, I was not well acquainted with Senator Ensign, having only met him on one or two occasions.

In May 2001, I was contacted by the Office of the General Counsel to the President and invited to an interview in Washington, D.C. I attended an interview in Washington on May 16 and was interviewed by Chief Deputy Counsel Timothy Flanigan.

On May 31, 2001, I received the various forms and releases relative to qualification for nomination, which have since been completed and returned to the appropriate offices.

The FBI and Justice Department interviewed me in July and I am aware that they have conducted their investigations into my character and fitness.

On August 2, 2001, I was advised by Senator Ensign's office of my nomination by President Bush.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

LARRY R. HICKS

The role of the Federal judiciary with the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The legislative and executive branches of government are delegated the authority and jurisdiction to determine public policy and to carry out that policy in accord with the Constitution. The role of the judiciary is to resolve specific cases or controversies in accordance with the law as expressed in the Constitution and legislation of the controlling jurisdiction. Actions by the judiciary which go beyond the adjudication of cases fully at issue and properly before the court exceed the jurisdiction, function and purpose of the court.

Our country is properly governed by those persons chosen by the electorate. Regardless of well-meaning intentions, action by the judiciary which exceeds the due bounds set forth in the Constitution and our nation's laws constitutes an unlawful exercise of power and jurisdiction by the judiciary.



Senator SCHUMER. Thank you, Mr. Hicks.

Now, we will begin the questioning. I know that Senator Kennedy has to leave.

Senator KENNEDY. No, no, that is all right.

Senator SCHUMER. Well, thank you, and we are going to try to move this along as quickly as possible and each of us may say a few words. I have just a few questions of the witnesses, but before I do I just want to make a couple of points about at least my view in terms of selection of judges, since this is the first time I am chairing the hearing for the full Committee.

Before the September 11 tragedy, we had a number of hearings in our Subcommittee, Senator Sessions and I, talking about the role of Federal judges and the role of the Senate in the nomination of those judges, and we touched on the role of ideology in the judicial selection process. At least I came to the conclusion that one's judicial philosophy, one's judicial ideology, is, has been and should be a part of the process; that we shouldn't sweep that under the rug and simply play "gotcha" politics, look back 30 years and say, oh, somebody did something back then, and knock them out, when the real reason was we didn't agree with their philosophy. We ought to have an open discussion of that above-board.

We also addressed the question of whether nominees bear a burden of proving themselves worthy of confirmation or they should come before the Senate with the presumption that they should be confirmed. Again, I came to the conclusion that, given the importance of the position to which you are nominated, as well as the lifetime nature of it, the burden really falls on the nominee to prove that he or she is worthy of being a judge.

We have also talked a little bit about how we choose judges. I have three criteria that I usually use when I play a role in selecting judges in New York and help guide me here. They are: excellence, moderation and diversity, excellence meaning legal excellence. I prefer moderate judges, not too far left, not too far right. I don't like ideologues on the bench. And diversity, meaning that we ought to not just have white males on the bench. So that is where I am coming from in this process, just to give you a little knowledge of that.

Now, I guess the major questions I have are for Judge Pickering, so I would like to first focus here.

Judge we recently had the pleasure of hosting your colleague, Judge Edith Brown Clement. As you know, she is a district court judge, like yourself, nominated to the Fifth Circuit, and the two of you have been on the trial bench for about the same period of time.

She has published approximately 1,400 cases. You have published about 95. I don't think that is necessarily an issue because I realize that many district court judges decide not to publish opinions when they deal with cut-and-dried matters of law. But at least my opinion is 95 is a little too few to choose somebody for the court of appeals.

So I guess what I am asking is do you know actually how many unpublished opinions you have had? Do you have an idea? Give us a ball-park; it doesn't have to be—

Judge PICKERING. Senator Schumer, when the request came from Chairman Leahy two days ago while I was leaving to come for this

hearing, I went back and the best records that we have available—since I was appointed to the bench 11 years ago, I have disposed of somewhere between 4,000 and 4,500 cases.

Senator SCHUMER. Right.

Judge PICKERING. My best judgment is that there were opinions of some kind that were written in about 1,100 of those cases. I think I probably have published—our count was, I think, around 92 or something like that.

Senator SCHUMER. Okay.

Judge PICKERING. And so that would leave approximately a little over 1,000 unpublished opinions.

Senator SCHUMER. Right.

Judge PICKERING. If I may give the reason for that—

Senator SCHUMER. Please.

Judge PICKERING. John Nesbitt, in his book *Megatrends*, at the beginning of the last decade of the last century, wrote that Americans were drowning in information and starving for knowledge. I have thought about the volumes and volumes of law that have been written since I start practicing law in 1961, and we have absolutely too much. No lawyer can read it all.

If you are not establishing precedent, why make lawyers have to read, and judges—and if they don't they could be sued for malpractice? I just think there is too much being written out there.

Senator SCHUMER. So, generally, you decided to publish the opinions that you thought were of some precedential value.

Judge PICKERING. That is correct.

Senator SCHUMER. Is that your general guideline?

Judge PICKERING. Yes, that was generally my criteria.

Senator SCHUMER. Okay. Let me ask you this: In your responses to the Committee's questionnaire you reported 28 cases in which you were—this is a standard question, by the way, just to inform the audience here, but there were 28 cases which you were reversed or sharply criticized in the Fifth Circuit.

Now, as I understand it, 21 of those 28 are unpublished. That is at least the record we have, 75 percent. So I don't know whether that is a high percentage or not because we have never really done a detailed study, but if the unpublished ones are supposed to be non-controversial, cut-and-dried, it does raise a question.

So I guess a request that I would make as Chairman of the Subcommittee on Courts is could you get to us within a quick-as-possible period of time, because we don't want to delay this, certainly the 21 cases, the unpublished cases, for which there was reversal, and do your best to give us the bulk of the unpublished opinions.

Now, there are a lot of them, but again this is such an important position, in such an important circuit, and you do have a record as a judge, which I always regard as the best way to regard somebody when you take the awesome responsibility of voting on a lifetime appointment for an Article III judge. Give us an idea of how we can get hold of certainly those 21 and then the vast bulk of the rest.

Judge PICKERING. Certainly, those 21, if they are available and we can get them, I will get to the Committee. When Senator Leahy first relayed the request, I stopped my staff from doing other work and we were in—the first request was not for copies of the unpublished opinions. It was for a list of those 1,100 cases.

And I wrote Senator Leahy and I told him that it would be impossible for us to get the entire list, but that we would do the best we could. And I am not sure how many that would have been, several hundred. In fact, I think it would have probably been most of them because after a while you dispose of these matters.

Let me touch back on—you mentioned the 28 reversals. You know, when the Senate asks you to give a summary of all the cases that have been reversed, you read 28 times and you read this; you can get a little depressed. And I looked back and sort of did the figures, and that was less than 1 percent of the cases I disposed of.

Senator SCHUMER. Yes.

Judge PICKERING. And as far as the cases that were appealed to the Fifth Circuit, in whole or in part I was affirmed 91 percent of the time.

Senator SCHUMER. Right.

Judge PICKERING. And affirmed totally some 83 or 84 percent of the time.

Senator SCHUMER. Right.

Judge PICKERING. Now, some of the opinions where the reversals came in came where the people did not appear in my court. I entered an order and then there was an appeal taken. So at the time the decision was made, it did not seem that significant or that important.

And in most of them, I look back over and, you know, as some of my colleagues on the Fifth Circuit have told me, they said, you know, we reversed you; that doesn't mean we are right, it means we have the last say. Some of those opinions, I still think my position was correct. On some of the others, I think, gee, I goofed there, I missed that one. And I think that happens in life, in general, but certainly I try.

Now, as far as getting you copies of all of these, since I have been on the bench we have changed computer systems three times. There is no system of keeping those opinions. What we did yesterday to get you—in fact, you asked for four areas. We got all of those, and in those four areas I have not been reversed by the Fifth Circuit, to my knowledge, a single time in any of those four areas. But we reproduced those from searching our computer hard disk and we will do the same thing and get you copy of every one of them that we can find.

Senator SCHUMER. The areas, just to inform my colleagues, I think—I don't have the four, but one was employment discrimination.

Judge PICKERING. Yes.

Senator SCHUMER. And one was voting rights. Was it voting rights?

Judge PICKERING. No, sir. I think it was—

Senator SCHUMER. What were the four?

Judge PICKERING. The ADA, the ADEA, Title VII, and equal pay.

Senator SCHUMER. Okay.

Judge PICKERING. And those were the four areas that I—

Senator SCHUMER. We may have a few others. I mean, in order to make your search a little easier, perhaps what we could—

Judge PICKERING. That does make it a lot easier.

Senator SCHUMER. I would add voting rights to that list, if we could get those, and my colleagues may want to add a few others. But if we can focus on those areas and get all your opinions on those, that would make it a little easier, plus the reversible ones.

Judge PICKERING. That would make it much easier for me.

Senator SCHUMER. Right.

Judge PICKERING. And I did send you some voting rights cases.

Senator SCHUMER. Great. I appreciate that.

I have spoken with Chairman Leahy. He has agreed, since it will be hard for us to judge, to invite you back for a second hearing, hopefully under better circumstances than we have today, after we have had a chance to review these unpublished opinions and conduct a more thorough evaluation. So we will try to pick a mutually convenient time.

Judge PICKERING. Certainly, if that is necessary, I will do whatever I am requested.

Senator SCHUMER. Great.

Judge PICKERING. I would hope that that would not be necessary, but I am certainly going to do everything I can to get the Committee all of the information they want and be responsive totally to what you request.

Senator SCHUMER. We very much appreciate that.

I am going to have a few more questions for the witnesses and maybe for Judge Pickering, but let me now call on my colleague, Senator DeWine, and then go to the other Senators.

Senator DEWINE. Mr. Chairman, I apologize that I had to slip out for just a moment, and I wonder if you could repeat what I heard as I was coming back in the door in regard to a second hearing.

Senator SCHUMER. Yes. We didn't try to do it while you were out.

Senator DEWINE. No, no, no. I understand that. We are all operating on a strange day.

Senator SCHUMER. What we were saying was because Judge Pickering has such a high percentage of unpublished opinions, which is not a reflection on what those opinions say or his quality as a judge, we have asked that, first, the 21 cases where he was reversed that are unpublished be given to us, and he has agreed. He has agreed to do everything we have asked.

Second, all the unpublished opinions in certain particular areas. Voting rights, employment discrimination, ADA, and I think ADEA were the four that were mentioned. There may be one or two others. Then, when the Committee had a chance to review those, we would invite Judge Pickering back, if people that it was necessary, to go over those. That was basically it.

Senator DEWINE. I wonder if I could inquire of the chair how many published opinions do we have now?

Senator SCHUMER. Ninety-five.

Senator DEWINE. We have 95.

Senator SCHUMER. Out of 1,400.

Senator DEWINE. Let me ask the judge—and you may have already asked the judge. I apologize.

Senator SCHUMER. Please, go ahead.

Senator DEWINE. How long does the judge think it will take to find the 21 specific cases where you were reversed and all the other unpublished opinions in regard to voting rights, ADA?

Judge PICKERING. You know, the 21, as far as the reversals, if we have them, if I had left them—I am not sure whether I have them in my briefcase or whether they were left in my office, but I will get them to you tomorrow if they are still in my office.

Senator DEWINE. That would be good.

Judge PICKERING. If I brought them in my briefcase, it would be Monday before I could fax them back to you. Now, some of those actually were not even opinions. One of them, I know, was just a bench opinion, where there was an argument before the court, I ruled, and it was appealed.

Senator DEWINE. Judge, what about the other ones? How long will that take?

Judge PICKERING. If they are limited to subject matter, we can search our computers and we can pull up—on the subject matters, we can pull those up in a few days. If they are not, you know, unless we get 900 cases—and, of course, we jammed the fax machine over at the Justice Department the other night trying to send them up here. And there is a volume of paperwork because these opinions are going to be 10 to 20 pages long, so it is going to be a tremendous amount of paperwork. It is going to take some time. If they are limited subject matter, it will make it a lot easier and we can get them a lot quicker. But if—

Senator DEWINE. Judge, are you clear what the subject matter is from the Chair?

Judge PICKERING. I understand they are going to give me that.

Senator SCHUMER. Yes. Why don't we, by tomorrow, get you just a list of the—I mean, I think we would want to ask our colleagues who are not here if they have any particular subject matters, but as far as I know, there are four or five.

Judge PICKERING. Does that then mean that it will be the whole list?

Senator SCHUMER. Probably not, no.

Senator DEWINE. Mr. Chairman, I just wonder if we couldn't get that—while we are here, get that list down so we know before we adjourn for today. I think the judge is more than willing to find the cases, but we are dealing with a lot of cases.

Senator SCHUMER. We couldn't say it is a complete list because I would want to talk to Senator Leahy and a few of my other colleagues who have expressed interest. But we will give you the list, and my guess is those five, six, seven topics will be the bulk, because I think we are all interested in the same areas.

Senator DEWINE. Mr. Chairman, I don't know what the precedent is on the Committee for a second hearing. I would assume that the precedent is—and I don't know this—I assume that there has to be a pretty compelling reason to have a second hearing. And I assume that if there something that comes out of these cases that we would not have had an opportunity to question about today, then that would be reasonable. But the judge is here, and it seems to me that now is the time to ask questions.

Senator SCHUMER. Well, I do intend to ask some questions on the subject matter.

Senator DEWINE. I know you do.

Senator SCHUMER. I just want to give you all a chance first.

Senator DEWINE. Well, I appreciate that. But, again, I guess I want to say that I think the decision about whether we need a second hearing is something that this Committee certainly needs to talk about. And I think we all would want to be heard on that because I think there is not a great deal of precedent for bringing the nominee back here.

Senator SCHUMER. Well, again, I would say that if, when we get these opinions, there are no questions, we are not going to have a second hearing. But certainly that option Senator Leahy made explicit to me and asked me—

Senator DEWINE. Well, I understand. I guess I just want to make it plain that my position is that there ought to be a compelling reason to do that. I suspect that that has been the precedent in the Committee. I mean, I don't have the precedents for the last hundred years of the Committee, but I suspect that that is basically the precedent. There has to be a pretty compelling reason to come back here, and it is not just that people want to get into an issue.

I will yield to the Chair.

Senator SCHUMER. Thank you, Senator.

Senator Kennedy?

Senator KENNEDY. Thank you very much, and I thank Senator DeWine.

I congratulate all of you on very wonderful, warm statements of support. I was particularly touched, as I think all of us have been, to have your son, Mr. Pickering, make that presentation. I think that was very impressive indeed.

I would like to just give a partial response to Senator DeWine and just elaborate perhaps on what our Chairman has said about the unpublished cases. The division between published and unpublished is dramatic in these circumstances, and there have been those who will not have the opportunity to testify who have raised questions about the nominee's commitment to some of the core constitutional values, particularly in the areas of civil rights and women's issues.

They have looked over those that make up this whole circuit, and 45 percent of the inhabitants are Latino or African American. So these issues of civil rights and commitment to these core values are enormously important to them.

I think, just following what Senator Schumer, the Chairman, has said, no one is saying that these are going to be reflective of an attitude that is going to be hostile necessarily, but we ought to at least carry forward the responsibility and have the chance to examine those.

People have suggested, although certainly not in this case—and I want to make it very clear, not in this case—that in some instances some have, and I think it has been demonstrated, not filed the cases or published the cases because they didn't want to give the reasons and the rationale for their decisions. I am not suggesting that in this, but some have.

I think rather than to leave this out there, the idea of just having the cases that Senator Schumer has mentioned—and I am not certainly, for one, interested in prolonging the search list, but I

would hope that they would include the cases on housing and housing discrimination. Civil rights cases, I believe, are included, and the voting rights, the privacy, which would be reproductive rights, and any labor cases with regard to workers.

I raise the labor cases because, as I understand it, out of all of the cases that have been published, only one of your published decisions was a Title VII employment discrimination decision. This published decision involved a white male filing a so-called reverse discrimination case.

So while you have published no employment discrimination cases other than one involving reverse discrimination, I don't know whether they haven't come up through the courts. We have seen these cases pursued there. I don't know whether you remember having them.

I am not trying to fly-speck you, really, on these kinds of cases, if you can remember them, but that would be an area that I was interested in. I don't know whether you want to make any general kind of comment, or we can just say we will wait until we see these results and you can add whatever comments you like on them.

Judge PICKERING. Senator Kennedy, I will be happy to send all of those in the areas that you have mentioned. I have been thinking while you were asking the question, and to the best of my knowledge I have not been reversed in any of the areas that I have heard discussed here today. My opinions, whether they were published or unpublished, have been in accordance with the law, or there would have been some reversal, with one exception.

There was a labor case that came up that dealt more with arbitration than it did with labor law, and in that instance, while I had some questions about the facts of the decision, I affirmed the arbitrator's award, ordered reinstatement of the employee, and stated in my opinion that if she was entitled to reinstatement, she was entitled to back pay. But the arbitrator had specifically said no back pay, and I understood Fifth Circuit law to say that if the arbitrator said no back pay, that was it, that I didn't have any discretion, and I said so in the opinion.

The Fifth Circuit did say that she should have been given back pay, and to my knowledge that is the only reversal I have.

Senator KENNEDY. Good.

Judge PICKERING. And that one you have; you already have that opinion because that was a published opinion. And that is the only reversal in any of this area that I am aware of.

You know, I never dreamed that I would ever get in a controversy for not publishing. Again, I just think there is too much out there, and I must confess that I published more when I first went on the bench. And I think part of it—the novelty wears off, and then again if you don't have anything to add to it that is going to be helpful to somebody, you are just cluttering up the information.

Senator KENNEDY. Well, I would appreciate it just in those areas, and we can narrow those.

Let's get to an area where you were overruled.

Judge PICKERING. Yes, sir.

Senator KENNEDY. I am concerned that at times you appeared to show an impatience in dealing with some cases, particularly those involving prisoners, many of whom did not have counsel.

In 1995 you wrote in *Rudd v. Jones*, "Law-abiding citizens also have rights. Those rights involve not having court calendars clogged with frivolous proceedings, not having their elected or appointed officials at taxpayers' expense spending a disproportionate amount of time defending frivolous lawsuits in Federal court."

You went on to state, "It is likewise clearly obvious that many inmates and their sometimes almost professional jailhouse writers have abused the process merely to go through the exercise to challenge the system, again to get a trip out of the penitentiary for a court hearing."

In reading a few of your opinions, I wonder if that concern about frivolous lawsuits by prisoners has led you to unfairly give short shrift to even those claims by prisoners that may have merit or that, at minimum, warrant additional examination. In several such cases, you were reversed by the Fifth Circuit.

For instance, in *Heptinstall v. Blount*, the Fifth Circuit held that you abused your discretion in dismissing, with prejudice, a case of a pro se litigant who had brought a claim that his arrest, pre-trial detention and subsequent conviction violated his constitutional rights. In finding that you abused your discretion, the Fifth Circuit stated that the sanction of dismissing a complaint with prejudice was a drastic remedy that should only be used as a last resort.

Similarly, in the case of *Johnson v. Forrest County Sheriff's Department*, in 1999, you were reversed pro curiam by the Fifth Circuit for dismissing an inmate's First Amendment challenge to a policy that prevented inmates from receiving any magazines, including religious material, in the mail.

In another case, *Garlotte v. Mississippi Department of Corrections*, you were reversed by the Fifth Circuit for dismissing the constitutional claims of three inmates without providing them a chance to amend their complaint or to submit affidavits in support of their claims.

I am not asking you to remember the facts or specific rationale of each of these cases. I am interested, however, in how you respond to the concern that in your haste to deal with frivolous lawsuits you unfairly dismiss claims by pro se litigants.

Judge PICKERING. Senator Kennedy, the question of pro se complaints has been something which I have a concern about from the procedures that we have in place today, and I have really even thought about publicly speaking on that issue.

I do think that there are some legitimate complaints that prisoners have in prisons, and I sometimes think that those complaints are not really brought out in these complaints. I have sometimes wondered if maybe an ombudsman working in those areas would be better than just bringing lawsuits, because I think nationwide, if you studied the statistics, percentage-wise I doubt if more than 1 percent of those cases across the entire Nation are ever successful.

There are a lot of frivolous lawsuits out there, a tremendous number of frivolous lawsuits out there now. Again, I think in this three instances—and I would have to go back—those were rec-



commendations from, I think, a magistrate judge in all three of those cases. They conducted the hearings and, you know, without looking at them, I don't know of anything else that I could say to you except—

Senator KENNEDY. Is this the standard if they have these kinds of abuses? Do other judges have these kinds of reversals or these kinds of conclusions that were made by the Fifth Circuit where they talked about the fact that it was a drastic remedy that should only be used as a last resort? These were reversed with a considerable statement or comment by the circuit court in finding trouble with your logic in those kinds of cases.

Judge PICKERING. Senator, I would need to see the opinion before I—

Senator KENNEDY. Okay. Let me, if I could, go to another area, and that is in 1976—I know you have been over this subject—you chaired the Human Rights Responsibility Subcommittee of the Republican Party which approved a plank in the party protesting the Supreme Court decision in *Roe v. Wade* and calling for an amendment to the Constitution to ban abortion.

In examining your opinions since you have been on the district court, I have not seen any involving reproductive rights. Have you had an occasion to deal with that issue?

Judge PICKERING. Sir, I cannot recall a single case involving that. In some of these other areas that you have mentioned, I have not had that many cases percentage-wise.

Senator KENNEDY. So you don't remember having any cases. There might have been, but they don't come to mind?

Judge PICKERING. Yes, sir, that is correct.

Senator KENNEDY. And do you have any opinion on *Roe*? Have you made a decision about whether that was correctly or wrongly decided?

Judge PICKERING. Senator, the Supreme Court of the United States has made its ruling on that, and it would be my duty as an appellate, just as a district judge, to follow the law as the Supreme Court has interpreted it, and I would do that.

Senator KENNEDY. Just another minute, Mr. Chairman.

Senator SCHUMER. Keep going.

Senator KENNEDY. In recent years, the district and appellate courts have addressed the question of—and maybe I would hear from you, if I could, Judge Pickering, and the panel just on this one question—have addressed the question of when a public university can constitutionally consider race as a factor in admissions. The issue in these cases is whether Justice Powell's decision in *Bakke v. University of California*, which stated that a university has a compelling interest in pursuing racial and ethnic diversity, should be followed.

So, in your view, under what circumstances can a public university constitutionally consider race as one factor in admissions, and do you believe that racial and ethnic diversity is a compelling government interest in public education?

Judge PICKERING. Senator, I think my job on the appellate Fifth Circuit, if I should be fortunate enough to be confirmed, would be to follow the precedents of the Supreme Court, and I would do that

in that area. That would be the guide that I would follow in that area.

Whether legal or not, beginning when I testified against the Imperial Wizard of the White Knights of the Ku Klux Klan and on numerous other occasions I have tried to build bridges between, because I think the future of America is not nearly as great if we don't solve racial problems. And I think that attempts to reach out and bring in and recruit are entirely appropriate.

I think that there need to be efforts to, you know, solve some of the problems that are out there from that standpoint. So I think from a moral perspective—but, again, I can't make decisions based on what I morally think is right and we should be doing. They would have to be in accordance with the precedents of the Supreme Court.

Senator KENNEDY. Judge Armijo?

Judge ARMIJO. Senator Kennedy, I think the approach that I would use in looking at a question like that is to recognize that we apply a strict or heightened level of scrutiny, that there must be some demonstration that there is no alternative means of achieving that particular right that is trying to be enforced; that is, the admission based on a classification such as race. I would follow, of course, the rulings of our Supreme Court in that regard and look at that matter very carefully.

Senator KENNEDY. Judge Pickering gave his own sort of personal view about life experience that troubled him in the past and expressed sort of a moral position, although obviously he reflected that he would follow the law. I was interested in whether you had anything you could say about the nature of the make-up of a university in terms of one of the principal vehicles in terms of education and the future of our society.

Judge ARMIJO. Well, education is our future, and I guess I have to reflect back on my own life experiences, really, almost to my grandfather, who struggled very much to become an attorney. He was licensed in 1915, but educational opportunities were very rare, extremely rare. It was very, very difficult, particularly in New Mexico which did not have many universities at all. So if families could not afford to go out of the State or procure some form of private opportunity, education simply was not available. So I think that from the point of view of a public institution, those opportunities need to be there and those doors need to be open.

Senator KENNEDY. Thank you.

Ms. Bowdre?

Ms. BOWDRE. Well, I would have to echo the comments of my colleagues. Certainly, on any matter that would come before me, if I am fortunate enough to be confirmed, I would follow the law. And on a personal level, while teaching at Cumberland, our school has made great strides in trying to attract a diverse student body, as well as a diverse faculty. And in my own position as Director of Legal Research and Writing, I have tried to hire minorities to be both teaching assistants and also instructors in our program.

I believe that diversity in education is very important, and as the first graduate of college from my family I certainly understand the importance of having educational opportunities available to all.

Senator KENNEDY. Good.

Mr. Friot?

Mr. FRIOT. Senator, in addition to echoing what has been said by my colleagues, I would state my personal view that just as diversity is, in my opinion, one of the strengths of our country, it should be one of the strengths of any college campus. And I think any college campus would be really a less attractive place for everyone if it were not reflective of the various constituencies and minorities that make up our country.

Senator KENNEDY. Mr. Hicks?

Mr. HICKS. Senator, I agree with the comments of my colleagues. Certainly, education is a very important opportunity throughout the United States. My role as a district judge would be to follow the law and that would be the guideline I would follow, and not just the guideline. I would feel that I was compelled to follow that, and particularly the mandates of the United States Supreme Court.

Senator KENNEDY. Thank you very much, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Kennedy.

I just wanted to let the record read in reference to Senator DeWine's question, in the 8 years that President Clinton was President, we had 9 second hearings. So it is not unprecedented, it is not common.

Senator DEWINE. Not unprecedented, but not common.

Senator SCHUMER. Right.

Senator Durbin?

Senator DURBIN. Thank you very much, Senator Schumer, and I might also add that, of the 9, it appears that 6 of them were circuit court judges. Also, some of them were delayed for periods of time of up to two-and-a-half years between the two hearings under Chairman Hatch. I am certain that that is not going to occur under this leadership. I hope it does not.

Judge Pickering, since 1960, America has changed a great deal and we have all changed personally a great deal, those of us who remember those days. You were a law student back in that period of time and you were writing law review articles about Mississippi statutes involving miscegenation, interracial marriage. America is a lot different today. I would like for you to reflect on who you were then and who you are today when it comes to that issue.

Judge PICKERING. Senator Durbin, the article you are talking about had to do with miscegenation, and let me say first off that I firmly believe that who ones marries is a personal choice and that there should not be legislation on that.

The particular note that you referred to was a miscegenation statute, and at that time more than half of the States in the Nation had those. The Supreme Court had declined to review those twice in the 5 years before that. I predicted in that article that those statutes would be changed in the future, and suggested what was sufficient as far as the legislature was concerned.

I also wrote—I only wrote two notes. They were what we call notes, law journal notes, and the other one was on the right of privacy. But certainly things have changed tremendously since this. Even then, I had a sense in the early 1960s that I would not say that things have drastically changed in the South. My thought

processes have changed, everyone's thought process—just like September 11 has greatly changed us as a Nation.

But even back in the 1960s, I spoke out against the mistreatment of minorities as far as the Ku Klux Klan. I testified earlier I testified against it in 1967, which was a tough thing for a 30-year-old prosecutor with four children to do.

But I attended the FBI briefings, because they trusted me, when they were looking for the folks who were trying to do violence to those who were trying to assert their civil rights—voting primarily at that time. And I am committed to equal rights for all Americans, certainly.

Senator DURBIN. Thank you. I would like to ask the other members of the panel, as well. One of the most serious challenges we face in terms of justice in America is, I guess, characterized by the shorthand "racial profiling," where minorities in this country feel that they are disproportionately arrested, convicted and incarcerated for certain crimes, particularly in the area of drug crimes, and I think the statistics are rather overwhelming in that area.

I have made it a policy of asking every Attorney General and every Assistant Attorney General with jurisdiction in this area what they thought about the fact that although we have 12 percent of our American population African American and only 11 percent whom we can say commit drug crimes, when we look at the rates of arrest and conviction they approximate 50 percent of the convictions for drug crimes are African Americans and over 58 percent of the incarcerations are African Americans.

If we hope to maintain credibility in our system for all Americans so that the laws are seen as just, what is the responsibility of a judge in this context? Are you only to take the cases as they are brought to you or do you have a larger responsibility when it comes to the issue of racial profiling?

Judge ARMILJO. Senator, certainly statistics, as those you have quoted, raise red flags, and I don't think any of us can ignore statistics like that. The question is what can a judge do. I think in a very practical sense and in a very basic sense, you take each case one by one and very carefully attend to the issues in that case, and I think as a judge ensure very, very carefully that there is due process in the proceedings that are under your control as a jurist, whether it is pre-trial matters, whether it is the course of a lengthy trial.

But I think first and foremost as a judge you ensure that the process is fair and you attend to the immediate litigant, the defendant who is before you. It is a tougher question on a broader scale how you as a judge influence perhaps circumstances that are not immediately before you. I think you do, in a sense, by doing your job the way it should be done.

Certainly, my caseload is not going to be limited to one defendant. It would be broad. As I grow into this position as a trial judge, and it being a lifetime appointment, there are many defendants, many cases, a multitude of cases that are going to be influenced by the way in which I conduct myself as a jurist.

Senator DURBIN. You were involved, were you not, in defense of criminal defendants?

Judge ARMIJO. Yes. Early in my career, I shared a contract with another attorney with the New Mexico Public Defender Department. They did not have in-house counsel in a tri-county area where I lived, and so we shared a contract and for three years handled all felony cases, misdemeanors, and a number of murder trials. So I have some familiarity with that.

And also touching on that to some extent, although not quite in the arena of criminal law, was a 7-year stint where, by contract, in addition to my civil practice, I prosecuted child abuse cases on behalf of the State.

Senator DURBIN. Would you mind responding as well, Ms. Bowdre?

Ms. BOWDRE. Certainly, the statistics that you mentioned give pause and should give pause, I believe, in the administration of justice in our country. If confirmed as a district judge, I would do my best to make sure that everyone who came before me, regardless of race, received a fair trial. Beyond making sure that every person got a fair trial, I don't know what I as an individual judge would really be able to contribute to that consideration.

Senator DURBIN. Within that definition of "fair trial," I assume, as you noted, it would involve an adequate defense.

Ms. BOWDRE. Absolutely, absolutely.

Senator DURBIN. In our State where our Republican governor has suspended the imposition of the death penalty, it was because in so many cases defendants were not adequately represented in capital cases. I would hope that all of us could learn a lesson from that.

Mr. Friot?

Mr. FRIOT. Senator, in addition to agreeing with what has been said by my colleagues, I would add only that there is a fairly well-developed body of law on the subject of selective prosecution, and I would, without hesitation, apply the Tenth Circuit and Supreme Court precedents on that subject if I were so fortunate as to be confirmed as a district judge.

Senator DURBIN. Mr. Hicks?

Mr. HICKS. I would concur with the previous comments, particularly those of Judge Armijo. I feel that she has very well spoken to the issue. This is clearly an issue that I am sure has been developing in the courts, will be developing further in the courts. And as a district judge, I will follow the lead of the Supreme Court and the Ninth Circuit.

Senator DURBIN. Mr. Pickering, would you like to comment on that?

Judge PICKERING. Senator Durbin, I recently gave a talk and one of the things that I said in that talk was that I am tired of sending people to the penitentiary. You are right on the statistics, and it leaves a devastating hole in the African American community when you take out that many young men.

The Sentencing Guidelines for youthful offenders are too severe. I think sometimes they don't weigh enough for career offenders. But every time that I have been able to—when I have had young African Americans before me, if there were any chance that they could under the Guidelines qualify for something less than jail time, I try to do that.

Recently, I convened a group in Laurel that we dubbed "Working for Kids at Risk," and I made that same statement to them. We need to do something in our communities where the disadvantaged are and try to have some programs where there are not so many that I have to send to the penitentiary.

So I share your conviction in that area, but we only sentence under the laws that are passed by Congress, and that situation has been caused as a result of the law we are called upon to enforce.

Senator DURBIN. Well, thank you.

Judge PICKERING. But I do share your concern about that.

Senator DURBIN. Thank you very much, and thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Durbin.

I will just have a few more questions and then either of my colleagues who have others may go, as well.

This is to everybody: Chief Justice Rehnquist while he was in President Nixon's Department of Justice provided a definition of strict constructionism. He said, and this is a quote from him, "A judge who is a strict constructionist in constitutional matters will generally not be favorably inclined toward claims of either criminal defendants or civil rights plaintiffs, the latter two groups having been the principal beneficiaries of the Supreme Court's broad constructionist reading of the Constitution."

In other words, what he was saying is that if rights are not expressly written into the Constitution, strict constructionists are unlikely to find them there. That would include, for example, the right to privacy, never mentioned in the Constitution once; the right to interracial marriage, an issue that Senator Durbin and Judge Pickering discussed; the right to education, and many other rights that I think, at least, Americans have come to rely on as our Constitution has grown.

So my question to each of you is do you consider yourself a strict constructionist, and if so do you agree with that definition of strict constructionism. If you disagree with Chief Justice Rehnquist's definition, how does your definition differ from his?

Judge Pickering?

Judge PICKERING. I would be hesitant to label myself anything in that area. I do think that we do need to rely on the plain meaning of language. I would certainly not want to be associated with the definition that you gave in that regard.

But, again, I think that from the standpoint of appellate judges, most of those areas have been spoken to by the Supreme Court. So we are guided by precedent and I will follow those precedents.

Senator SCHUMER. Judge Armijo?

Judge ARMIJO. Senator, I too would hesitate to label myself in any such category, but I have to wonder how much of the passage of time we must erase or should we erase in terms of trying to say things ought to be the way they were 50 or 60 years ago, or 30 years ago.

We are an evolving society. Issues present themselves almost daily that could not have been imagined these days, 5, 10, 20, 30 years in the past. I think we have to apply initially the plain language rule, look very carefully at. I don't think we need to try to find ambiguity where none exist, but there are circumstances per-

haps that would compel use of other tools in interpreting a statute. Precedents must be a guidance. Where that is lacking, I think we must look to analogous cases or examples within our circuit, for example, outside of the circuit where none exist, to be guided. But I think that we are far beyond the situation where we pigeon-hole ourselves anymore. I think that door is open.

Senator SCHUMER. Ms. Bowdre?

Ms. BOWDRE. Well, in my opinion, certainly the starting point would be the Constitution and its language. But we have 200-something-plus years of precedent from the United States Supreme Court interpreting that Constitution, and my role as a district court judge would be to apply the law as the Supreme Court has pronounced it to be. And I would agree with my colleagues about not being labeled or pigeon-holed into the label of strict constructionist, as defined there.

Senator SCHUMER. Thank you.

Mr. Friot?

Mr. FRIOT. Senator, if I were called upon to address a constitutional issue that had not authoritatively been resolved by the Supreme Court, I would look to the closest available precedents from the Supreme Court, the precedents from the Tenth Circuit, also for that matter to the policy apparently sought to be advanced by the provision in question. And I would try to be informed by all of those sources rather than taking any one narrow approach.

Senator SCHUMER. Mr. Hicks?

Mr. HICKS. Senator, I too would be leery of any labels. I feel that construction or definition of the law is probably in almost situation involving a district court judge very well-defined, and it is my duty to follow that law.

Senator SCHUMER. Let's turn to a specific one that has aroused lots of controversy. It is not in the Constitution, at least in those words, and that is the right to privacy. Do each of you—and I will let you elaborate later, but I prefer a quick, succinct, even yes or no answer—believe the Constitution guarantees a right to privacy?

Judge PICKERING. The Supreme Court has said yes. I will follow that.

Judge ARMIJO. Yes.

Ms. BOWDRE. Yes.

Mr. FRIOT. Yes.

Mr. HICKS. Yes.

Senator SCHUMER. Do you believe that right to privacy includes a woman's right to choose whether to have an abortion?

Judge PICKERING. You know, as to personal feelings, I would—

Senator SCHUMER. No. I mean the constitutional right.

Judge PICKERING. The constitutional, yes.

Senator SCHUMER. Your interpretation of the Constitution.

Judge PICKERING. Well, the Supreme Court has given two decisions on that and they are the law and I would follow it.

Judge ARMIJO. I would follow that law.

Ms. BOWDRE. I would follow the controlling precedent of the Supreme Court.

Mr. FRIOT. I would do the same.

Mr. HICKS. *Casey* and those decisions would be controlling on me.

Senator SCHUMER. So at the district court level or even up on appeal, because some district court decided differently, if somebody brought a case to overturn *Roe v. Wade*, you would overrule that, is that correct?

Judge PICKERING. I would follow Supreme Court precedent.

Senator SCHUMER. And do you believe the Supreme Court precedent—

Judge PICKERING. The Supreme Court has spoken very plainly in *Roe* and *Casey*.

Senator SCHUMER. And so you would vote to overrule it?

Judge PICKERING. I would apply that law in ruling.

Judge ARMIJO. As I would. I am bound by that precedent.

Ms. BOWDRE. I would be, too.

Mr. FRIOT. I think the prerogative of overruling Supreme Court decisions rests exclusively with the Supreme Court.

Mr. HICKS. I could and would follow that law.

Senator SCHUMER. Thank you. Now, I want to turn to something that—again, this is a while ago—Judge Pickering, you brought up. In a speech to the Mississippi Baptist Convention, in 1984, you stated that the Bible should be “recognized as the absolute authority by which all conduct of man is judged.”

You are, by all accounts, a man of deep faith. I respect that. I am a person of faith myself. I would assume that if you were at the bar association of Mississippi, you would make a different statement than at a religious convention. In other words, I don’t take your comments to mean that the Bible would trump the United States Constitution in a court of law, although, of course, our Constitution relishes, as it should, the freedom of religion and the practice of religion.

Judge PICKERING. Senator, you are absolutely correct. That was a meeting of how we as Christians should live. I do think it is not quoted exactly as I said it and I am not absolutely of that because I don’t have it, but I think the exact quote was “by which we should live and teach.” I think that is what I probably said.

Now, that same Bible I said we should live by says render to Caesar that which is Caesar’s and render to God that which is God’s. That means that whenever you take an oath to follow the Constitution, you follow the Constitution, and I will do that. So I don’t see any conflict in there. And I did provide you another speech on jury nullification and said exactly what you said, that we should have a rule of law and we should abide by that.

Senator SCHUMER. Okay, thank you.

Let me ask each of you another question. Again, I believe these help us understand your reasoning as judges.

In the past few years, there has been a marked change in the way the Supreme Court handles federalism. This may relate to some interpretation of strict constructionism. I don’t know. Part of what has concerned me is that these cases lack deference to Congress as a coequal branch of us making our own findings and acting legislatively to address compelling needs.

Judge Breyer wrote what I would regard, and many others, I think, as an eloquent dissent in the *Broncalla* case, the Violence Against Women Act case, in which he said, “Since judges cannot change the world, it means, within the bounds of the rational, Con-



gress, not the courts, must remain primarily responsible for striking the appropriate State/Federal balance.”

First, I would like to know if each of you agrees with Justice Breyer’s comment. And then, second, in overturning congressional acts, especially in the area of civil rights, the courts have created what some have called a new federalism that fundamentally alters the structure of our Government, and at least in the view of me and others, is altering it for the worse in the sense that they want to go back—this is the Supreme Court—to the 1930s, 1890s, and, say, Congress’ interpretation of the Commerce Clause. Remember, the Commerce Clause back in the 1890s and through the 1920s stopped things like child labor laws and other kinds of things, the Supreme Court interpreted it.

So I would like for each of you to just postulate a little, so we can see how you think, on this new federalism and on the Supreme Court’s recent decisions—and precedent here is changing all the time, so your opinions are going to matter—the Supreme Court’s view that Congress has exceeded its bounds when it has made a whole number of laws related to the Commerce Clause, 11th Amendment, and things like that.

Judge Pickering?

Judge PICKERING. Mr. Chairman, I think that our Nation would not have lasted 200 years if it were not for the separation of powers. I think that is one of the real beauties of our system to keep any one body from having absolute power. I think we would have real difficulties if that occurred.

I think that Acts of Congress should be presumed constitutional. We should start off with that deference to them. Without any question, I think when Congress states an intent as a part of the preamble, as part of the bill, that that intent should be controlling in the situation. I think the courts should be very careful before they find any statute to be unconstitutional.

Senator SCHUMER. I just wanted to follow up a little bit on that. Does what you are saying apply to the deferring to the findings of Congress in terms of the national need? In this case that I mentioned, there was a view, well, Congress said we needed this under the Commerce Clause, but we don’t think their findings really justify it. That sent a good number of us in a bit of a tizzy, and there were lots of findings.

I mean, it seemed to me in that instance the Court was really seeking to replace its own judgment in terms of the finding for Congress’. I helped write that law and I will tell you, Senator Biden, who is on this Committee but couldn’t be here today, spent years of his life writing it. And we came to a pretty strong conclusion that violence against women did impede our national commerce in lots of different ways, and here was the Court saying not that we didn’t have findings, but basically saying those findings weren’t good enough. It was really substituting its judgment for ours, and that is what created such a strong dissent on the part of the Court.

Judge PICKERING. As best I could, I have tried—I have given you some personal opinions, but I have tried not to do those in the areas that I thought were not settled by the Supreme Court and

there might be an issue, so that there wouldn't be a disqualification.

Let me say that I feel very strongly that any findings by Congress should be given great deference. Now, to go further than that, I feel, might prejudice my being able to sit on a case such as that, and I would like to see the briefing and would like to see what the facts are. And I think that would be as far as I would feel comfortable, but I certainly do feel that the findings of Congress are entitled to great deference.

Senator SCHUMER. Judge Armijo?

Judge ARMILJO. Senator Schumer, I too believe very strongly that statutes are presumptively constitutional, that we need to look at that and understand that initially, and that great deference should be given to the findings.

I have to just think about the potentials here of domestic violence in a different way. Some years ago, I did a fair amount of work in the area of stalking, and again that touches in a similar vein where you don't have limitations to one's State necessarily. And I think that the decision you refer to can affect other scenarios.

As I think about that, what I also have to look back on is how does one afford protection to those that the congressional statute was intended to protect or to serve. And I have to look back under the current state of the law that we look to our States and hope that within our structure, perhaps under own constitutions—and I must say that New Mexico is a State which has relied very heavily on its own constitution to secure protections for individuals. Perhaps that may be at this point the remedy or the place to look for the protections that we feel that we have lost or that have been lost as a result of the cases which you have mentioned.

Senator SCHUMER. Ms. Bowdre?

Ms. BOWDRE. Certainly, our forefathers did us a great service in putting together the Constitution that they did, and I think that the separation of powers is such a strong part of our Government. In their wisdom, certainly they saw that the legislative branch would have the resources available to make findings and to announce legislation for the country.

And I agree with my colleagues that the findings of Congress and the enactments of Congress certainly are due a presumption of constitutionality. At the same time, though, our forefathers did set up the checks and balances and the opportunity to test the enactments of Congress to see if they meet with the provisions of the Constitution.

There is a fine tension there between those two powers. But as a district court judge, if I am fortunate enough to be confirmed, I would first look to the legislation, look to any pronouncements of the Supreme Court that would be binding upon the decision in making my judgment in the case.

Senator SCHUMER. Mr. Friot?

Mr. FRIOT. Senator, in addition to associating myself with that which has been said by my colleagues, I would only add that I think from the perspective of a district court judge, it would be especially presumptuous for a district court judge to set him or herself up as a reviewing court, if you will, to critique congressional

findings underlying legislation either under the Commerce Clause or section 5 of the 14th Amendment or otherwise.

Senator SCHUMER. Mr. Hicks?

Mr. HICKS. I agree strongly with the comments of Mr. Friot and my colleagues who have preceded me.

Senator SCHUMER. I am finished with questions. I thank each of you for bearing with us.

Senator DeWine?

Senator DEWINE. Mr. Chairman, thank you very much.

With the exception of Judge Pickering, who, if confirmed, will go to the appellate court, each one of you will be at the trial court and you will certainly be dealing with important legal issues, but you will also be dealing with people on a daily basis.

You will be really for many people their only real, meaningful contact with the Federal Government. You will undoubtedly make a lasting impression on every person that comes into your courtroom.

Describe to me how you see your role as a Federal judge, and in doing so give me an example—I certainly would not want you to attach a name to it, but give me an example of the conduct of a Federal district court judge that you would not like and talk to me a little bit about what a Federal court judge should do.

Judge Pickering, I am going to start with you because you have had the opportunity to practice this for a long time, and the type of district court judge you are today is probably a pretty good indication of what kind of circuit court judge you will be.

Judge PICKERING. Senator, when I started out practicing law, I was in the Federal court from time to time and they used to have a procedure where all the lawyers that were going to come before them for motions that day had to get there and sign up and you waited, if necessary, all day. Lawyers would get there as early as six o'clock in the morning to sign up and they would be there all day.

When I went on the bench, I determined that I was not going to keep everybody sitting around, so I scheduled motions and things of that nature 45 minutes apart, trying to make it as convenient to the attorneys to where they didn't waste any more time that is necessary.

I also felt that judges took up too much time with the lawyers after the jury was selected handling matters that they should have handled before the jury ever got there. So I was very mindful of jurors' time and tried to make sure that we disposed of it, and tried to run a pretty tight ship of lawyers to say we are going to take care of our business beforehand. Sometimes, that wasn't easy, but it worked out most of the time.

Senator DEWINE. Good. Thank you.

Judge ARMIJO. Senator, approximately 5 years ago the New Mexico State Bar undertook a study of public confidence in the courts and it was very enlightening in our State. Certainly, one thing that was realized is when we talk about that, we certainly don't limit ourselves to the judge, the courtroom, the courthouse. We look at the courtesies extended, we look at witnesses, we look at preparation of attorneys, how we might facilitate a fair hearing.

I think there is always a temptation, particularly at the Federal level, as I perceive it—and this a very personal answer—that you lose touch at that level. I think there has to be great care taken to ensure that you always remember your responsibilities as a public servant, always.

I think when I have heard of example—and I have not heard of many, but a sense that perhaps the ivory tower has become too high, it has been in situations where perhaps one has lost touch with the reasons why you are before the public in that profession.

I think temperament is important. Collegiality—even though as a district judge we don't maintain the same contact that I would have with my current colleagues on the appellate court, we are part of the team and I think that is extremely important.

But I think that when we talk about how we appear, we do not limit ourselves to the courtroom and our chambers. I think every witness is important, and every attorney, and I would certainly commit and have committed to taking that very, very seriously and never losing touch.

Senator DEWINE. Thank you.

Ms. BOWDRE. Senator, when I first started practicing law, I had been clerking at the Federal district court and so I was kind of designated the Federal court associate and got to be involved in just about all the cases we had in Federal court. I also had a lot of cases in our State court, and I must preferred being in Federal court because the judges that we had on the bench in Federal court made sure that everybody played by the same rules. In State court, it often depended upon who had contributed to the judge's campaign as to what rules were applied there.

So one thing I would like to further, assuming I am confirmed, would be that same approach that everyone in the court plays by the same rules and knows what the rules are going in. One thing that I noticed that our State court judges do who are elected is, after every jury trial, they write letters thanking the jurors for participating. Of course, there is a political motive for doing that, but I would like to do that as a Federal judge. It is not done often there as far as I know, but I think it is important that we thank our citizens who do take the time out to participate in that most valued role as a juror.

Senator DEWINE. Thank you.

Mr. FRIOT. Senator, I believe that the—not to over-dramatize it, but I believe that the highest calling of a Federal district judge is to do right those things which can only be done right at the trial level, and many of them are effectively unreviewable.

I think that a misguided Federal district judge can deny justice in a way that can never be rectified, and for that reason, as an example, I would not emulate those judges with whom I have had experience who have prided themselves on being absolutely inflexible on scheduling matters. That can be a tool of oppression that can force unfair settlements in situations in which a little more leeway would have let justice be done. And that is the kind of thing with which I would hope never to be associated as a Federal district judge, if I should be so fortunate as to be confirmed.

Senator DEWINE. Thank you.

Mr. Hicks?

Mr. HICKS. In my view, the Federal district court is the trial court and is the court which will have the greatest contact with the citizens of these United States. I believe it is absolutely important that there be as much respect for the court as possible, and I believe that that respect starts with respect by the judge toward the people who are in the courtroom. It extends to the litigants and it extends to the counsel, and respect for our judicial system and a level playing field by the judge is all-important.

Senator DEWINE. I appreciate your answers. I believe there are many good lawyers out there who are certainly intelligent enough to be Federal district court judges. What we have a hard time, I think, sometimes sorting out, whether it is a home State or in cases like today where you are on a panel and taking your testimony, is what your demeanor is going to be and what your judicial temperament—you used the term “judicial temperament.” I have never seen a good definition of it.

It is kind like the Justice from the State of Ohio on the Supreme Court, Potter Stewart, said about obscenity; you know when you see it. It is kind of hard to define. The same way with judicial temperament. We certainly know it when we see it, and let me just say as one Senator I certainly appreciate it when I see it. I think it is very, very important and it is ultimately what will assure fairness in your courtroom.

You all are intelligent and you all know the law. The question is how you conduct that courtroom and what your demeanor is and your relationship with the attorneys. As you all have pointed out, the relationship with the attorneys will ultimately impact the jury and it will ultimately affect the clients of those lawyers who are maybe innocent of the transgression that might have been committed by a lawyer on a particular day.

Judge PICKERING, let me close with you. Tell us again why you would give up a position as a trial court judge, which many judges think is the greatest job in the world, to go into a situation where you have less contact with litigants, no contact with litigants, really, and less contact with anybody to render decisions—a lot of hours of reading, a lot of hours of isolation. Why do you want to do it?

Judge PICKERING. Senator DeWine, shortly after it was known that I was to be recommended for this position, one of my colleagues who is on the Fifth Circuit called even before I had finished breakfast the day it got out and wanted to know if I had lost my mind.

Senator DEWINE. Well, maybe that is what I was saying.

[Laughter.]

Senator DEWINE. I was a little more subtle. I don't know you as well.

Judge PICKERING. You know, I think at different stages of one's life, different positions hold more attraction. I must confess that 11 years ago when I was nominated for this position, I declined an opportunity at that time to be considered for the appellate position because I did not think that—I had been in the courtroom trying cases and I realized that there would be more of an ivory tower on the appellate level and I just felt like I didn't want to do that at

that stage of my life. So I have had 11 years on the bench and I feel that I am ready to move up to the next level.

Senator DEWINE. Thank you. Mr. Chairman, thank you very much.

Senator SCHUMER. Thank you, and I appreciate you being here, Senator DeWine.

Just a couple of notes and then we will close. Senator Sessions asks that his submitted statement on behalf of Ms. Bowdre be submitted into the record. Without objection, I will do that and leave the record open for introductory statements of any other Senator for a week.

Senator SCHUMER. In addition, I just want to let each of you know that we are going to keep open for the purpose of submitting questions the record for one week for the four district court nominees. So you may get written questions within the next week and then have to submit them to us. We may need more time—we will see—in terms of Judge Pickering as soon as we get the production of some of the unpublished cases that we talked about.

With that, let me thank each of you and your families—I know they are very proud—for being here today under these difficult circumstances. But, again, I would like the people halfway around the world to watch that they can't stop us from doing our job, no matter what they try to do to us, even if we have to move the room or do whatever else.

So I thank you for being here and we are adjourned.

[Whereupon, at 3:59 p.m., the Committee was adjourned.]

[Questions and answers and a submission for the record follow.]

#### QUESTIONS AND ANSWERS

##### **Responses of M. Christina Armijo to questions submitted by Senator Leahy**

#### PUBLIC QUESTIONS

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that background information reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct you attention to that report for a response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of share decisis? Does the commitment to share decisis vary depending on the court?

*Answer:* A sitting trial judge should strongly adhere to the doctrine of share decisis. I believe that a trial judge should interpret the law and not make it. If confirmed, I will follow governing precedent of the Circuit and the Supreme Court. At the same time, I recognize that there is sometimes a lack of precedent for cases that present new or novel issues or questions, statutes and regulations. Where there is no direct precedent, a judge should look to analogous situations and try to draw from these a solution that most closely follows what the law has been in his or her jurisdiction. A judge should resist second-guessing what the legislative body intended.

*Question 3:* I'm sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* When national security is threatened, every citizen's freedom is at risk. There is a delicate balance here, as between the right to individual liberties and the significant interest in national security. Every instance of tipping that balance against a citizen's liberty interest must be done with the greatest of care and scrutiny. I believe, however, that the magnitude of the risk to national security and the extreme consequences as occurred on September 11, are proper, significant factors in assessing how this delicate balance is affected.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* In reviewing recent opinions of the Supreme Court, I agree that some federal legislation which has been struck down resulted in the narrowing of the scope of Congress' power.

If confirmed, I will faithfully apply governing Supreme Court and Circuit precedent to these issues, while also respecting the strong presumption of constitutionality applicable to all acts of Congress.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* On aspect of the expansion of sovereign immunity is whether States may be sued in federal courts. The case of *Seminole Tribe vs. Florida* dealt with a federal law which required the Indian tribes be able to negotiate in good faith with state governments to allow gambling on reservations. The law imposed a duty upon the states to negotiate in good faith. The Supreme Court in *Seminole* said that Congress can authorize suits against the states only when it acts under Section Five of the Fourteenth Amendment, and not when it is using any other power. In *City of Boerne vs. Flores*, the Supreme Court addressed the scope of Congress' authority under Section Five of the Fourteenth Amendment. The Court has said that if Congress provides remedies to prevent a violation of an existing right, such remedies must be in proportion to the nature or extent of the violation. In reviewing this case, and others, one important factor this is apparent is the extent of the legislative record available (including documentation) to support the proposed legislation intended to remedy a violation of a right. I believe that where Congress has made a record, including findings supported by documentation, that those finding and owned deference by the courts to the extent consistent with applicable Supreme Court precedent.

If confirmed, I will faithfully apply governing Supreme Court and Circuit precedent to these issues, while also respecting the strong presumption of constitutionality applicable to all acts of Congress.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* In *South Dakota vs. Dole*, 483 U.S. 203 (1987) the Supreme Court upheld the constitutionality of federal legislation which required the states to set a twenty-one year old drinking age in order to receive federal highway funds. In the case, the court stated that such conditions may be placed on grants as long as the conditions are expressly stated and so long as the conditions relate to the purpose of the particular spending program.

While I do not have an opinion, nor will I speculate, as to whether the holding in *Dole* might be reconsidered at some future time in light of the Court's more recent "federalism" cases, I do not a recent Tenth Circuit case, *Kansas vs. United States*, 214 F.3d 1196 (10<sup>th</sup> Cir. 2000) This case involved the federal welfare program. As a condition of the states receiving monies under this program, the states are required to consider certain conduct, including child support enforcement, as conditions. The State of Kansas argued that such conditions violated the Tenth Amend-

ment. The Tenth Circuit upheld the constitutionality of this federal law. The Tenth Circuit did not depart from the holding in *Dole* and once again declared and reaffirmed the holding in *Dole* that federal laws that place strings on grants are constitutional where the terms are clearly stated and where the conditions imposed relate to the purpose of the program.

If Congress provides money to a state and places conditions on the funding, and if those conditions are clearly stated and relate to the purposes of the program funded, then I believe the Congress may enforce those conditions consistent with the principles set forth in *Dole* and other related Supreme Court precedent.

*Question 7:* Are these any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

I presume that all federal states are constitutional, and any review or consideration of the constitutional merits of such a law must, first and foremost, begin with that presumption. I am unable to address the merits of the constitutionality of any particular statute because, as a sitting judge, such a question may come before me.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress' enumerated powers under the Constitution?

*Answer:* I presume that all federal statutes are constitutional and any review or consideration of the constitutional merits of such a law must, first and foremost, begin with that presumption. I am unable to address the merits of, or render an opinion as to, the constitutionality of any particular statute because as a sitting judge, such a question may come before me.

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### Responses of Karon O. Bowdre to questions submitted by Senator Leahy

#### PUBLIC QUESTIONS

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of share decisis? Does the commitment to share decisis vary depending on the court?

*Answer:* For eleven years, I have taught law students that the doctrine of share decisis forms the bedrock of our legal system. Other components of that foundation include the supremacy of the Constitution as interpreted by the Supreme Court, and the rule of law. The only authority to overrule or modify prior Supreme Court decisions lies with the Supreme Court itself. Similarly, the circuit courts can overrule or modify their own rulings in accordance with their procedures and if the Supreme Court has not addressed the issue. But a federal district court judge must follow binding precedent of the controlling circuit and the Supreme Court.

If confirmed as a district court judge, I would be bound to follow controlling precedent from the Supreme Court and the Eleventh Circuit Court of Appeals. Not to adhere to the critical role of share decisis would put me at odds with what I have taught and what I firmly believe is a central part of our system of justice.

*Question 3:* I'm sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* On questions of such magnitude, the legislative branch of government is uniquely suited with the necessary resources and the knowledge to address issues that affect all Americans so greatly. Without addressing specifics and running the risk of prejudicing myself should such an issue come before me, a balance must be struck between the civil right of the individual and the national need for measures to increase security. The most important role of the federal government, however, is to provide for national security while respecting constitutional rights.



*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* Certainly, as stated above, the decisions of the United States Supreme Court bind district court judges on the issues decided in those cases. Supreme Court precedent on analogous issues should also be consulted. However, enactments of congress carry a presumption of constitutionality with the burden resting heavily on the opponent of the legislation to establish that it contravenes the Constitution. At the same time, the separation of powers and the checks and balances system have generally worked well for centuries, with some exceptions.

On matters challenging the constitutionality of legislation on which the Supreme Court has not ruled, if confirmed, I would first thoroughly examine the legislation itself and any relevant legislative history, including Congressional findings and statements of purpose. I would then compare the legislation with the Constitution, the supreme law of our land, and any controlling or analogous pronouncements by the Supreme Court. In making a decisions, I would give deference to the Congressional findings and to the presumption of constitutionality.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* The Supreme Court has stated that when Congress seeks to subject states to private suits to enforce constitutional rights, the legislation must have "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997). More recently, in *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001), the Court elaborated on the restrictions on Congress' ability to abrogate states' immunity. When no suspect class is involved, the legislation subjecting states to private lawsuits for money damages must be supported by evidence of a pattern of discrimination by the states. The remedy crafted by Congress must be congruent and proportional to the wrong sought to be remedied.

When Congressional action meets this test, it can subject states to private suites for damages for discrimination that does not involve strict scrutiny. Because this question involves issues that may well be presented to me should I be fortunate to be confirmed, I hesitate to make any statement that might prejudice my ability to rule on such a case. Should such an issue be presented to me, if confirmed, I would first thoroughly examine the legislation itself and any relevant legislative history, including Congressional findings and statements of purpose. I would then compare the legislation with the constitution, the supreme law of our land, and any controlling or analogous pronouncements by the Supreme Court. in making a decision, I would give deference to the Congressional findings and to the presumptions of constitutionality.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* The Supreme Court, in *South Dakota v. Dole*, 483 U.S. 203 (1987), held that Congress in certain circumstances can condition receipt of federal funds on specific state action. Those conditions include that the exercise of the spending power as an inducement of state action be in pursuit of the general welfare; that the means chosen be calculated to advance the general welfare; that the condition of the states' receipt of federal funds be stated unambiguously so that states can make a knowing choice; and that a national concern be addressed by the condition of funds. The Court also cautioned that such exercise of the spending power must not be independently barred by some other constitutional provision, and must not be so coercive as to turn into compulsion.

Any action of Congress to condition receipt of federal funds on a waiver of sovereign immunity would have to meet these constitutional standards. Because this question involves issues that may well be presented to me should I be fortunate to be confirmed, I hesitate to make any further statement that might prejudice my ability to rule on such a case. Should such an issue be presented to me, if confirmed, I would first thoroughly examine the legislation itself and any relevant legislative history, including Congressional findings and statements of purpose. I would then compare the legislation with the Constitution, the supreme law of our land, and any controlling or analogous pronouncements by the Supreme Court. In making a decision, I would give deference to the Congressional findings and to the presumption of constitutionality.

*Question 7:* Are there any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

Federal statutes are contained in fifty Titles, filling numerous volumes of books. I have not studied or even read all the hundreds of thousands of statutes. Therefore, I could not presume to know whether any of those statutes for constitutional scrutiny but to only rule on those issues brought before me. On matters challenging the constitutionality of legislation itself and any relevant legislative history, including Congressional findings and statements of purpose. I would then compare the legislation with the Constitution, the supreme law of our land, and any controlling or analogous pronouncements by the Supreme Court. In making a decision, I would give deference to the Congressional findings and to the presumption of constitutionality.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress' enumerated powers under the Constitution?

*Answer:* Federal statutes are contained in fifty Titles, filling numerous volumes of books. I have not studied or even read all the hundreds of thousands of statutes. Therefore, I could not presume to know whether any of those statutes violate the Constitution. Moreover, if confirmed, my job as a judge would not be to ferret out statutes for constitutional scrutiny but to only rule on those issues brought before me. On any such issues, if confirmed, I would first thoroughly examine the legislation itself and any relevant legislative history, including Congressional findings and statements of purpose. I would then compare the legislation with the Constitution, the supreme law of our land, and any controlling or analogous pronouncements by the Supreme Court. In making a decision, I would give deference to the Congressional findings and to the presumption of constitutionality.

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### Responses of Stephen P. Friot to questions submitted by Senator Leahy

#### PUBLIC QUESTIONS

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely addressed the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*? Does the commitment to *stare decisis* vary depending on the court?

*Answer:* In my opinion, a United States District Judge should faithfully adhere to the doctrine of *stare decisis*. It is well established that, in some situations, the United States Supreme Court is somewhat less constrained by the doctrine of *stare decisis*. However, the fact that the Supreme Court is, in some situations, relatively less constrained by *stare decisis* should be of no moment to a District Judge. If confirmed, I will follow the precedents of my circuit and the Supreme Court as the doctrine of *stare decisis* requires.

*Question 3:* I'm sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more

terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* In my opinion, if we strip ourselves of our civil liberties, the terrorists will have won an important battle. For that reason, although I believe that there is now some justification for enhanced investigative powers, I believe that it would be advisable to treat the most intrusive of the new investigative powers as being experimental and subject to stringent oversight.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* A common thread which may be found in most of the Supreme Court's recent federalism decisions is that the Court's rationale is frequently based, at least in part, upon either an absence of Congressional findings satisfactory to the Court or upon the presence of Congressional findings which the Court concluded were unsupported by the legislative record. See, e.g., *United States v. Lopez*, 514 U.S. 549, at 562 (1995) (absence of findings); *City of Boerne v. Flores*, 521 U.S. 507, at 531 (1997) (legislative record insufficient to support findings); and *Kimel v. Florida Board of Regents*, 528 U.S. 62, at 89 (2000) (conclusion, based upon the legislative record, that legislation was "an unwarranted response to a perhaps inconsequential problem"). In my opinion, a Federal District Judge should proceed with utmost restraint when confronted with a claim calling upon the District Court to critique, review or otherwise weight the propriety of Congressional findings or the sufficiency of the evidence in the legislative record supporting those findings. Indeed, federal statutes are presumed to be "constitutional exercise[s] of legislative power." Indeed, federal statutes are presumed to be "constitutional exercise[s] of legislative power." *Reno v. Condon*, 528 U.S. 141, 148 (2000) (internal quotation omitted). Among the many important duties of a trial judge, the foremost obligation is, in my view, to serve as the guarantor of the integrity of the process by which disputed issues of fact are tried and reduced to judgment by way of verdict of judicial findings. This is not a philosophical exercise and cannot be accomplished at any other level in our judicial system. In my opinion, trial judges serve the public interest best when they concentrate their time and energies upon the numerous tasks (many of which are tedious and time-consuming) which collectively result in the fair and trustworthy discharge of those judicial duties which are unique to the trial court level.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* "Congress is not limited to mere legislative repetition of this Court's constitutional jurisprudence. Rather, Congress' power to enforce the [Fourteenth] Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swatch of conduct, including that which is not itself forbidden by the Amendment's text." *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 121 S. Ct. 955, at 963 (2001) (internal quotation omitted), citing *City of Boerne v. Flores*, 521 U.S. 507 (1997) and *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000). In my opinion, the Supreme Court's recent decisions dealing with the scope of Congressional authority under Section 5 of the Fourteenth Amendment were not intended to, and do not, render the Section 5 grant of remedial legislative power illusory. In *City of Boerne*, the Court after reaffirming several basic tenets of Section 5 jurisprudence, *id.* at 520, In *Kimel*, the Court (i) reaffirmed that Congressional intent to abrogate Eleventh Amendment immunity must be made "unmistakably clear." 528 U.S. at 74. (ii) held that the Section 5 power will indeed trump Eleventh Amendment immunity if the Section 5 legislation is found to be "appropriate legislation," *id.* at 644, and (iii) concluded, applying the *Boerne* congruence and proportionality test in light of the legislative record before it, that the legislation in question was so "out of proportion to a supposed remedial or preventative object that it cannot be understood as

responsive to or designed to prevent, unconstitutional behavior,” *Id.* at 86 (internal quotation from *Boerne* omitted). It is clear that the perceived “indiscriminate scope of the Act’s substantive requirements” was crucial to the Court’s decision. *Id.* at 650. *Garrett* clarified the analytical framework and reiterated the principle that Section 5 legislation must comport with the contours of the constitutional guarantee at issue as defined by the Court. 531 U.S. at —: 121 S. Ct. at 963. Under *Garrett*, the first analytical step is to “identify with some precision the scope of the constitutional right at issue.” *Id.* The next step is to determine whether Congress identified a history and pattern of unconstitutional state conduct sufficient to support the exercise of Section 5 legislative power. *Id.* at 964. The Court concluded, in *Boerne*, that the record did not reveal “a pattern of [unconstitutional] discrimination by the States” sufficient to support the exercise of Section 5 power. *Id.* at 967. If confirmed, I will apply the principles of these and future Supreme Court cases to any cases before me that raise these issues.

**Question 6:** If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

**Answer:** The Supreme Court has held that Congress may encourage states to consent to suit by offering them funding if they waive sovereign immunity. See *South Dakota v. Dole*, 483 U.S. 203 (1987); cf. *Oklahoma v. United States Civil Service Commission*, 330 U.S. 127 (1947).

**Question 7:** Are there any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

I am aware of none.

**Question 8:** Are there any federal statutes, or actions thereof, that go beyond Congress’ enumerated powers under the Constitution?

**Answer:** I am aware of none. If confirmed, I will apply the presumption of constitutionality to all acts of Congress.

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## Responses of Larry R. Hicks to questions submitted by Senator Leahy

### PUBLIC QUESTIONS

**Question 1:** Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is “yes,” please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

**Answer:** I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation routinely address the type of information called for by this question. Without waiving confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

**Question 2:** In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

**Answer:** A federal district court judge is bound to follow the doctrine of *stare decisis* and the doctrine is not subject to variance.

**Question 3:** I’m sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

**Answer:** It is evident that there is a great public concern and focus upon the need for legislation to address the risk of more terrorist attacks. However, I do not believe that constitutional rights can be “traded-off” by the legislature regardless of the alternative. Any legislation designed to provide greater security will have to fall within constitutional limitations.

**Question 4:** In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress’ power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These

cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* My view is that the district court judge is obligated by the doctrine of *Stare decisis* to follow the law as pronounced by the Supreme Court. If the district judge's personal views should vary from the law established by the Supreme Court, the Judge's obligation is to set aside his or her personal views and be bound by the law established by the Supreme Court. If confirmed, I would apply the presumption of constitutionality to all Act of Congress.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* Based upon the United States Supreme Court's decision in *Bd. of Trustees of the Univ. of Alabama v. Garrett* 531 U.S. 356, 121 S. Ct. 955 (2001), it would appear that Congress can subject states to private suits for damages for discrimination where it can identify a history and pattern of unconstitutional discrimination by the states. When a pattern of discrimination is shown, the rights and remedies which may be enacted by Congress must then be congruent and proportional to the targeted violation. This reflects my impression of the *Bd. of Trustees of the Univ. of Alabama v. Garrett* decision which appears to be the controlling authority relative to this question. If confirmed, I would examine all relevant authority on this issue carefully and would follow the law established by my district's Circuit Court of Appeals and the United States Supreme Court. I would also apply the presumption of constitutionality to all Acts of Congress.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* The United States Supreme Court's decision in *South Dakota v. Dole*, 483 U.S. 203, 107 S. Ct. 2793 (1987) is relevant precedent in responding to this question. However, without further definition of the certain ways in which federal funds might be used by the state, the extent of the state's waiver of sovereign immunity, the elements of a private action and definition concerning what constitutes misuse of such funds, this is a question which I cannot answer in a simple yes or no fashion. If my nomination is confirmed, I assure the Committee I would follow all controlling precedent of my district's Circuit Court of Appeals and the United States Supreme Court. And, as stated above, I would apply the presumption of constitutionality to all Acts of Congress.

*Question 7:* Are there any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

I know of now such law. If confirmed, I would apply the presumption of constitutionality to all Act of Congress.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress' enumerated powers under the Constitution?

*Answer:* I know of none. All federal statutes and sections thereof are presumed to be constitutional and, in the event that I should be fortunate enough to have my nomination confirmed, it would require a clear and convincing showing before I would allow the presumption of constitutionality to be overcome.

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## Responses of Charles W. Pickering, Sr. to questions submitted by Senator Leahy

### PUBLIC QUESTIONS

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer

is “yes,” please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*? Does the commitment to *stare decisis* vary depending on the court?

*Answer:* In our legal system the doctrine of *stare decisis* is very important. It provides stability and continuity in the law. It helps fulfill the maxim that we are “a government of laws, not men.” In my opinion, district courts are firmly bound by the doctrine of *stare decisis* as to cases decided by their circuit and the U.S. Supreme Court. Circuit judges are firmly bound by the decisions of the Supreme Court, as well as the Circuit’s precedent, unless overruled by the en banc court.

*Question 3:* I’m sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* Our Constitution was adopted to create a government to provide appropriate services, and basic protection to our citizens, while at the same time guaranteeing them great freedom and liberty under the Bill of Rights. There will always be tension between the need to protect our citizenry in times of peril and to protect constitutional rights of individuals at the same time. Although there is great need to protect our nation from terrorism, we must not change the character of our nation which makes our people the freest people on earth.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress’ power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a “new federalism” crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* The circuit courts are bound to follow Supreme Court precedents in this area as in all others. Congressional acts are nevertheless presumed to be constitutional. If confirmed, I will adhere to these basic principles.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* Again, circuit courts are bound to follow the precedents established by the Supreme Court in this area. In a case of first impression, the circuit courts, under the doctrine of *stare decisis*, should try to determine what the Supreme Court would do based on previous Supreme Court precedent. The Supreme Court has announced the standard by which states can be subject to private suits for money damages. If that standard is met, then a state can be subject to the type of suit suggested in this question.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* Under Supreme Court precedent, Congress can require that states do certain things as a condition of receiving federal money. If the conditions of waiver of sovereign immunity meet the standards outlined in Supreme Court precedent, then it should be upheld.

*Question 7:* Are there any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* The Federal Code now consist of 50 titles and over 250 volumes. It would take an analysis of a specific statute to determine whether it violates the sovereign immunity doctrine. Further, acts of Congress are presumed to be constitutional.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress' enumerated powers under the Constitution?

*Answer:* The Federal Code now consists of 50 titles and over 250 volumes. It would take an analysis of a specific statute to determine whether it violates the sovereign immunity doctrine. Further, acts of Congress are presumed to be constitutional.

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#### SUBMISSION FOR THE RECORD

##### **Statement of Hon. Jeff Sessions, a U.S. Senator from the State of Alabama, in support of the Nomination of Karon Owen Bowdre**

I am pleased to introduce to the Committee a first-rate judicial nominee. Karon Bowdre has been a student, practitioner, and professor of the law. She graduated cumlaude from Cumberland School of Law. She served as the associate editor of the Cumberland Law Review.

Mrs. Bowdre also served as a law clerk for the Honorable J. Foy Guin, Jr. in the Federal District of Northern Alabama, the court to which she has been nominated. So she is very familiar with the federal district court.

Prior to becoming a full-time professor, Mrs. Bowdre spent several years as an associate and partner, practicing law at the well respected law firm of Rives & Peterson. During a substantial part of that practice, she litigated a number of cases in the federal court system.

Mrs. Bowdre has spent the last eleven year's teaching students about the rule of law. As a professor and the Director of the Legal Research and Writing Program at the Cumberland School of Law, she has authored numerous articles on insurance law and legal ethics.

In addition, she has been called to testify as a legal expert on insurance issues. And she has been involved in lecturing at Continuing Legal Education seminars.

Mrs. Bowdre knows how to deal with lawyers, with witnesses, and with parties. These experiences have no doubt prepared her for service on the federal bench.

Mrs. Bowdre's reputation as a lawyer and as a scholar has earned her broad support. I would like to quote a letter submitted by one of the most successful plaintiff lawyers in the State of Alabama, Jere Beasley. Even though Mrs. Bowdre, as an insurance defense attorney, was generally arguing the opposite position of Mr. Beasley, he had this to say on her behalf:

"I have known Karon for a number of years and believe that she will be an outstanding U.S. District Judge. She will have wide acceptance from lawyers. . . regardless of whether they represent plaintiffs or defendants. While my practice is one that represents plaintiffs or defendants. While my practice is one that represents plaintiffs only, I am convinced that Karon will be fair and competent to all concerned and that is all that any lawyer should ask of a judge. She is highly qualified and, in my opinion, will do an outstanding job."

Karon Bowdre's integrity, experience, and commitment to the rule of law are outstanding. I commend Chairman Leahy for placing her on the agenda for today, and I recommend her to my colleagues on the Committee without reservation.





**NOMINATION OF HARRIS L. HARTZ, OF NEW MEXICO, TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT; KURT D. ENGELHARDT, OF LOUISIANA, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA; JOHN D. BATES, OF MARYLAND, TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; WILLIAM P. JOHNSON, OF NEW MEXICO, TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO; AND SHAREE M. FREEMAN, OF VIRGINIA, TO BE DIRECTOR OF THE COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE**

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**THURSDAY, OCTOBER 25, 2001**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 2:18 p.m., in Room SR-385, Russell Senate Office Building, Hon. John Edwards presiding.

Present: Senators Edwards, Leahy, Hatch, and Kyl.

**OPENING STATEMENT OF HON. JOHN EDWARDS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA**

Senator EDWARDS. Welcome, and thank you all for being here.

Before we get started, I want to thank and commend Senator Leahy, who is not here at this time, for keeping this train running at a very stormy time. You won't find another Committee in the Congress that has been more productive than the Judiciary Committee, which Senator Kyl and I both serve on, over the last 6 weeks.

Since taking leadership of this Committee in July, the Chairman has held 8 hearings; he has held 4 after September 11 and he has held 2 since our offices were shut down last week, all at the same time that all of us were working on a massive antiterrorism bill. He has held more hearings and moved more judges through the Committee than the Judiciary Committee moved by the same date in 1989 and 1993, the last time we had a first-term President, and he has broken those tallies in spite of the events of September 11.

One final comment. We are now holding hearings at a time when many people, myself included, do not have access to our offices. While we have been able to prepare for this hearing, I am not certain whether all my colleagues on the Committee have been able to do that. So we are going to ask to leave additional time for written questions after this hearing.

I will now ask Senator Domenici to introduce our nominee from New Mexico.

**PRESENTATION OF HARRIS L. HARTZ, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT, BY HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO**

Senator DOMENICI. Thank you very much, Mr. Chairman. Do you want me to do the circuit court first?

Senator EDWARDS. That is fine.

Senator DOMENICI. Thank you very much, Mr. Chairman and Senator Kyl. I will be very brief.

First of all, I want to say that we have a very distinguished lawyer in our State, a very distinguished, and while we know that he would do wonderful work in New Mexico, where he has served on our circuit court and been a pinnacle of everything a judge should be, we are now prepared today to share him with our country. He is going to be a great circuit court judge. His name is Harris Hartz.

He has with him today some very dear people and I just want to have them stand up very quickly: his wife, Deborah; his mother, Muriel; and his son, Andrew. They are as pleased as any of us to be here. Even though our buildings are not exactly what they thought, they are delighted to be here and very grateful to you for permitting their son and husband to be confirmed today.

Senator EDWARDS. Welcome. We are happy to have you all here.

Senator DOMENICI. Mr. Chairman and Senator Kyl, let me just say if you are looking for somebody to be on the circuit court of appeals who has many academic credentials as you can possibly vest in a human being—if that is what you are looking for, he has got that. He is a very brilliant lawyer.

Wherever he attended either undergraduate school or law school, both at Harvard University, he graduated at or near the top of his class; in undergraduate, magna cum laude from Harvard, in the very, very highest echelons, and editor of one of their student papers.

From our standpoint, whenever we look around and say is there a Republican that can please the judiciary, be they Democrat or Republican, one who stands head and shoulders over most lawyers in every respect, including ethics, we are very pleased to have this man in our midst.

All I want to say today is you won't go wrong. I don't want to take any more of your time because this is as right a candidate as I could produce from New Mexico, and I am so grateful that Senator Bingaman has done an awful lot to help move this along and support him.

Senator EDWARDS. Thank you very much.

Senator Bingaman, I want to go to you next, but before I do let me see if my colleague had a statement he would like to make.

**STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE  
STATE OF ARIZONA**

Senator KYL. Mr. Chairman, in view of the time, let me just put my statement in the record, but commend all of the nominees for being here, and welcome all of the witnesses. We have an impressive array of witnesses to introduce them. I will not impinge on their time.

I also congratulate them, welcome their families, and just note in advance that the fact that there are not a whole bunch of Senators up here ready to spend a lot of time grilling these witnesses is not an expression of disinterest, but rather a confirmation of your qualifications and the fact that they have been thoroughly vetted. You wouldn't be sitting here today if you weren't in a very good position to be confirmed quickly, and that is the reason why I hope and imagine that this will go very quickly for you.

Senator EDWARDS. Senator Bingaman?

**PRESENTATION OF HARRIS L. HARTZ, NOMINEE TO BE CIR-  
CUIT JUDGE FOR THE TENTH CIRCUIT, BY HON. JEFF  
BINGAMAN, A U.S. SENATOR FROM THE STATE OF NEW MEX-  
ICO**

Senator BINGAMAN. Thank you very much, Mr. Chairman. I am very pleased to be here with Senator Domenici in support of this nomination.

Harris Hartz is one of our very best lawyers in New Mexico and is recognized as that by all members of the bar as far as I know. He is admired for his contributions to our State and our community, as well, and I know that in all respects he has strong support, Democratic support, Republican support, non-partisan support, throughout our State.

So I compliment the President on nominating him, I compliment Senator Domenici on recommending the nomination, and I urge the Committee to act quickly on his nomination and get him confirmed.

**PRESENTATION OF WILLIAM P. JOHNSON, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO BY  
HON. PETE DOMENICI, A U.S. SENATOR FROM THE STATE OF  
NEW MEXICO**

Senator DOMENICI. Mr. Chairman, could I continue with the district court nominee from New Mexico?

Senator EDWARDS. That is fine.

Senator DOMENICI. Thank you very much. I will be very brief.

We have a district court judge who serves in the district court in the 5th Judicial District of New Mexico. That is a court of general jurisdiction, Senator Kyl.

Recently, I went down to that part of New Mexico to see what he did, and we are going to have a United States District Judge that has been at every level of courts of general jurisdiction. He will have a special empathy wherever the United States Government has relationships in their court to young people because he has been head of the juvenile court down there for part of his judicial career. He has been in arduous trials, where he has come out of them with both plaintiffs and defendants thinking that they couldn't find a better person sitting behind the bench than him.

I know, in particular, Senator Kyl, you are always concerned about judges and the quality of them. And, Senator Edwards, that is where you made your life for a long time. You had to have good judges. You had to have judges that understood the law, applied it fairly, and let the jury decide when they are supposed to. We have got a man here that is going to do that in the Federal system for a long time.

He has with him some people very dear to him. I am just going to quickly mention them. His wife, Loretta, is here from New Mexico; his father, John; his mother, Shirley; and his brother-in-law, Errol Chavez. I just introduce them to you.

I now yield to Senator Bingaman, whom I thank profusely for helping with these nominees. He will not be sorry, New Mexico won't, and you won't.

Thank you.

Senator EDWARDS. Thank you, Senator Domenici.

Senator Bingaman?

**PRESENTATION OF WILLIAM P. JOHNSON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO, BY HON. JEFF BINGAMAN, A U.S. SENATOR FROM THE STATE OF NEW MEXICO**

Senator BINGAMAN. Well, thank you again, Mr. Chairman and Senator Kyl. I also strongly support this nominee.

In the case of Harris Hartz, I have known him for nearly 30 years and have had the opportunity to observe him for all that period and admire his abilities. But in the case of Judge Johnson, I have not known him for any period of time. I did get a chance to meet with him and I know him by reputation in the communities that he has served in, particularly in Roswell, where he is a district court judge. He is extremely well respected by the bar in the community. I know of his interest in delinquent youth, in particular, and his work with Camp Sierra Blanca, which is a model for the kind of rehabilitation program we need to see much more of in this country.

So I believe that he will be an excellent addition to the Federal bench and I recommend that the Committee go ahead with his confirmation as quickly as possible.

Senator EDWARDS. Thank you. Senator Domenici and Senator Bingaman, thank you both very much.

Senator Breaux?

**PRESENTATION OF KURT D. ENGELHARDT, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA, BY HON. JOHN B. BREAU, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator BREAU. Thank you very much, Mr. Chairman. Senator Landrieu and I and Congressman Vitter are all here to strongly support the nomination of President Bush of Kurt Engelhardt, to be a Federal district judge for the Eastern District of Louisiana.

Kurt will bring to this position, I think, the type of qualifications that are very important in the sense that he is a graduate of Louisiana State University Law School. All of your nominees will have a great deal of academic experience and legal qualifications, but he

also has a history of having a local practice in two of the major firms in the greater New Orleans area, in Metairie and in New Orleans, and really brings an understanding to the bench of what it is like to have a local practice dealing with everyday, real problems in the real world.

In addition to that, he also has experience in the academic world, having clerked and worked for one of our distinguished professors of law at Louisiana State University. So he has had the academic experience, he has had the real-world experience, and he has also had experience which I think is very important from the judicial side in having clerked for a Federal district judge from Louisiana.

I think it is important to note that, in addition to that judicial experience, Kurt served with great distinction as the Chairman of the Louisiana Judiciary Commission, which was a very difficult position in the sense that you had to look at ethical complaints against sitting judges, something that obviously is not an easy task, and Kurt served with great distinction.

So I think he will bring to this position both practical, real-world experience, a good academic background and academic experience in the teaching profession, as well as actually serving the judicial system through his work as Chairman.

The only thing that I can note that caught my eye of his earlier errant ways is when Kurt served as the Chairman of the Louisiana Term Limits Campaign. Of course, now that he is getting a lifetime appointment, I know he sees the error of his earlier days.

[Laughter.]

Senator BREAU. I enthusiastically support Kurt and am delighted to have his wife, Ann, with us today, as well.

Senator EDWARDS. Thank you, Senator Breau.

Welcome, Ann. We are glad to have both of you here.

Senator Landrieu?

**PRESENTATION OF KURT D. ENGELHARDT, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA, BY HON. MARY LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator LANDRIEU. Thank you. I am going to submit my statement to the record, Mr. Chairman, because you have been very gracious to have three Louisianians here before you. And because our Congressman is a very, very good friend of the nominee, he can give us more detail.

Let me just support the comments of my senior Senator, send my statement for the record, and say that this nominee has my full support. I am confident, based on his academic credentials, his reputation as a lawyer, and his civic involvement in our community, that he will be an excellent addition to the bench.

Thank you very much.

Senator EDWARDS. Thank you very much, Senator Landrieu and Senator Breau.

Congressman Vitter, with your permission, I am going to go to Senator Warner, who needs to leave to go to a briefing.

Senator Warner, I couldn't see you over there hiding behind the bench.

Senator WARNER. That is fine, Mr. Chairman.

Senator EDWARDS. We are glad to hear from you now.

**PRESENTATION OF SHAREE M. FREEMAN, NOMINEE TO BE DIRECTOR OF THE COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE, BY HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA**

Senator WARNER. I am about to start a hearing of the Armed Services Committee as the ranking member, but this is a privilege that we have here in the United States Senate in the confirmation process to appear on behalf of distinguished Americans who are willing to step up and serve as public servants, and we have an extraordinary one today in Sharee Freeman. While I have not known her that well, this curriculum vitae tells the story of accomplishment.

As a courtesy to the Chairman of the International Relations Committee in the House, for whom she worked for these many years, I would like to have my statement appear in the record following the Members of the House who are here on her behalf.

She is undertaking a job which will place her on the front lines of challenges in America. It is called the Community Relations Service. It helps local communities resolve serious racial and ethnic conflicts. That is a challenge, particularly at this point in our history where this Nation is at war and a particular sect of people, Muslim-Americans, who are wonderful Americans, who are now subjected in ever-increasing numbers to this problem. This will be among her earliest tasks.

So I shall leave it to our distinguished Chairman and ask that my statement appear behind the House Members on behalf of this distinguished American, Sharee Freeman.

Thank you very much.

Senator EDWARDS. Thank you very much, Senator. We appreciate you being here.

Welcome to all of our colleagues from the House. We are very delighted to have you here.

Congressman Hyde, I think we will start with you, please.

**PRESENTATION OF SHAREE M. FREEMAN, NOMINEE TO BE DIRECTOR OF THE COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE, BY HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Representative HYDE. Thank you very much, Senator. Senator Warner did it exactly right. Sharee Freeman is the nominee for the important post of Director of the Community Relations Service and currently is a counsel for the International Relations Committee, where we kidnapped her from the Judiciary Committee where she served 4 years as one of the leading counsel over there. She was responsible for civil rights issues, fair housing, crime, religion, and the Constitution, and did a brilliant job.

She came to the Hill from the Department of the Interior, where she served as Acting Assistant Solicitor for General Indian Legal Activities and as an attorney adviser. She spent 13 years with the Department of the Interior, and worked intimately and extensively with Indian tribes throughout the U.S. concerning education, the ADA, housing, civil rights, welfare, and social service issues.

She developed an expertise in appropriations law and Government contract work, and I am proud to say she was an assistant district attorney in Philadelphia from 1982 to 1984. She is a native New Yorker. She received her bachelor of arts from St. Lawrence University and her juris doctorate from Georgetown.

As soon as she finished law school, she became a clerk to the Honorable Norma Holloway Johnson, of the U.S. District Court for the District of Columbia.

What I am most proud of about Sharee is she is an advocate of community service and she regularly cooks and serves dinner for the homeless of the metropolitan area with the Step Ahead program. She is a mentor volunteer for Hispanic, black and Indian high school and college students. She assists them in securing employment, internships, higher education, advanced degrees, and financial aid.

Let me just say this: I know Sharee very well. She has been on my staff on the Judiciary Committee for 4 years, and a year on International Relations. She takes the tough jobs, she does the heavy lifting. She does it willingly and she does it well. I am very proud of her and I am very proud that the President named her for this important post.

Senator EDWARDS. Thank you very much. That is a ringing endorsement.

Congresswoman Morella, please.

**PRESENTATION OF JOHN D. BATES, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, BY HON. CONNIE MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND**

Representative MORELLA. Thank you, Mr. Chairman. I thank you for the opportunity to come before you to introduce my constituent, John D. Bates, who has been nominated by President Bush for the position of United States District Judge for the District of Columbia.

It is a great privilege to introduce him because he is a constituent. I am very proud of him. He is an extremely well qualified attorney and he has considerable experience. He has served his community with distinction, and I am confident he will make an excellent judge.

Mr. Bates has a long and distinguished resume, and in the interests of time I will only highlight some of the impressive qualifications for the Committee.

He is currently a member of the law firm of Miller and Chevalier in Washington, D.C. He received his B.A. from Wesleyan University, his J.D. from the University of Maryland School of Law, and from 1968 to 1971 he served in the United States Army, including a tour in Vietnam. He was awarded the Bronze Star for exemplary service.

For almost 20 years, Mr. Bates served in the office of the U.S. Attorney for the District of Columbia as an Assistant U.S. Attorney. He tried a wide variety of Federal cases and argued over 30 appeals in the U.S. Court of Appeals for the D.C. Circuit.

He has handled many sensitive cases dealing with national security and constitutional issues. From 1987 through 1997, he was the

chief of the Civil Division of the U.S. Attorney's office. He served on detail as deputy independent counsel from 1995 to 1997, and received very wide praise for his fair and thorough approach to his judicial work.

I just wanted to point out that I happened to see the Legal Times, two issues, June 21 of this year and July 16, and I would call to your attention, Mr. Chairman, the fact that he has received applause, approbation, high praise on both sides of the aisle; for example, Eric Holder, Jr.; David Kendall; Joseph Sellers, who is a noted civil rights lawyer; Mark Tuohey, III, a former D.C. Bar president, and I could go on and on. This says something about the feeling and the sentiment that others have who have worked side by side with him and who have seen his work. He brings outstanding credentials educationally, through his experience both in the private sector and in the public sector, in the military, as well as in the community.

He is here with his wife, Carol Ann Rhees, his daughters and his son, and I wonder if they might just stand.

Senator EDWARDS. Welcome. We are glad to have you.

Representative MORELLA. Imagine two partners, both being lawyers, and I have often said behind every successful man is a surprised mother-in-law. Well, I don't think that that was the case in this situation.

Mr. Chairman, I am confident that John Bates will perform his very important duties as a U.S. District Judge for the District of Columbia with the utmost integrity and fairness. With his past experience, his long record of service, his commitment and his judicial temperament, he will serve our Nation with honor. So it is my pleasure to present him to you.

Thank you.

Senator EDWARDS. Thank you very much.

Congressman Vitter, thank you very much for your patience.

**PRESENTATION OF KURT D. ENGELHARDT, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA, BY HON. DAVID VITTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Representative VITTER. Absolutely, Mr. Chairman. Thank you very much for the courtesy of allowing me to be here and speak briefly. Because my two Senators have already outlined Kurt Engelhardt's qualifications, I will be very brief and just hit a couple of high points.

First of all, let me say I have known Kurt very, very well for 15 years, and I couldn't think of anyone I would rather be here on behalf of and anyone I could recommend more highly in terms of professionalism and professional capacity, in terms of intellectual capacity for the job, and most importantly to me in terms of personal integrity. I say that very sincerely, so I couldn't recommend him more highly.

I think there are two things about his background and resume which I would like to point out, and I won't go through it exhaustively. You obviously have his resume and the Senators have touched on it more broadly, but I wanted to pinpoint two things.



First of all, Senator Breaux mentioned something that is very important. He served on what is called the Louisiana Judiciary Commission, and for part of that service he was Chairman of the Commission. That is a body established under State law to deal with alleged ethical violations of State courts judges, and so obviously it is a very important and very delicate position.

Kurt, by all accounts, by everyone's account, handled himself really, really well in that capacity. First of all, he did the difficult work that had to be done, including recommending and following through on the censure of certain judges, even as he was a practicing attorney. As a former practicing attorney yourself, you can imagine that that is not an easy role to fill. He did that and made tough decisions, along with his fellow Commission members.

But he also did something which hadn't been done on the Commission before. He worked very proactively on a widespread education effort, reaching out to the judiciary, quite frankly to avoid problems from arising, nipping problems in the bud, educating the judiciary about all aspects of the Louisiana Code of Judicial Ethics so that problems would not arise and have to come to the enforcement stage. He gets very, very high marks in Louisiana on both aspects of that service, and I think that is very important in terms of his qualifications for a judgeship.

The second thing I would point out is his very broad practice in the law and, as a result, his very broad-based support for this position. As you know, his file is full of very sincere recommendations from across the spectrum, Democrats and Republicans and folks he has met in every aspect of his practice—defense bar members, trial bar members, judges and others. I think that speaks very, very highly, a truly broad spectrum of support which in part recognizes his broad practice.

I think that is also evidenced by the exceedingly smooth process his whole appointment has been. In every stage of vetting, whether it is the White House or the FBI or our two Democratic Senators or hearing from the local bar, there has been really unanimous praise and not even a speed bump along the way, which I think speaks very highly of him. He was the consensus choice by all of the folks in Louisiana whom the President asked for recommendations. He was the first choice for an Eastern District judgeship and he was immediately agreed to by our two Democratic Senators.

So those are some highlights. I thank you for your courtesy and, of course, I encourage you to move as expeditiously as possible on his nomination.

Thank you.

Senator EDWARDS. Thank you very much, Congressman Vitter.

Congresswoman Norton, welcome. We are honored to have you here.

**PRESENTATION OF JOHN D. BATES, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Delegate NORTON. Thank you very much, Mr. Chairman. I am here to recommend to you John Bates for the United States District Court for the District of Columbia. I am here because it is our

district court, but the District of Columbia has no Senators. I will call that anomalous, to be polite about it.

President Clinton granted me senatorial courtesy. The Chairman of this Committee has agreed to consult with me on all nominees for the district court in my district, and I am very pleased to say that the White House has agreed to do that as well.

It is in that capacity that I was asked to meet with Mr. John Bates and became impressed with him. He is now associated with a major law firm in this city. What recommends him best as far as I can see to you is his experience, Mr. Chairman, as a trial lawyer, something I think you will understand is important if one is going to be a district court judge. One wonders if one is even qualified to be a district court judge if the lawyer has not been a trial lawyer.

Mr. Bates is essentially a career United States Attorney. He spent 17 years in the office of the United States Attorney here in the District of Columbia, trying a broad variety of cases so well that he rose to be Chief of the Civil Division of the U.S. Attorney's office.

He was detailed for a couple of years to the Independent Counsel's office while still at the U.S. Attorney's office, and won high marks there for balance and impartiality. He is well regarded by the bar of this city, for example, as Chairman of the Litigation Section of the Federal Bar Association. He serves on the board of directors of the Washington Lawyers Committee for Civil Rights Under Law. He is well educated, a B.A. from Wesleyan, a noted editor of the Maryland Law Review, Order of the Coif.

This is a well-qualified nominee, Mr. Chairman. I am pleased to support his nomination.

Senator EDWARDS. Thank you very much, and I thank my colleagues. Your support of these nominees is very helpful to us. We appreciate your comments and appreciate your testimony. We are honored to have you with us.

Could I ask, when of this panel has left, all the nominees to come forward, please?

If you would stand, please, and raise your right hand?

Do you swear the testimony you are about to give before the Committee will be the truth, the whole truth and nothing but the truth, so help you God?

Judge HARTZ. I do.

Mr. ENGELHARDT. I do.

Mr. BATES. I do.

Judge JOHNSON. I do.

Ms. FREEMAN. I do.

Senator EDWARDS. Judge Hartz, would you remain, and if the rest of the panel would step back for now?

Judge WELCOME. We are happy to have you here. We heard the testimonials from those who came before you who obviously have a very high opinion of you, and you have a very impressive file.

Let me ask you first whether you have an opening statement and whether you have members of your family that you would like to introduce for us.

**STATEMENT OF HARRIS L. HARTZ, NOMINEE TO BE CIRCUIT  
JUDGE FOR THE TENTH CIRCUIT**

Judge HARTZ. Thank you very much, Mr. Chairman. I do not have an opening statement. I just wanted to thank you for conducting this hearing today in the extraordinary circumstances facing the country. I am very grateful to Senator Domenici and Senator Bingaman for their kind words and their support.

If I may introduce my family, my wife, Debby—

Senator EDWARDS. And ask them to stand, if you don't mind.

Judge HARTZ. Please stand.

My son, Andrew, and my mother, Mrs. Hartz.

Senator EDWARDS. Good afternoon, and welcome. I know you all are proud to be here and I know how proud you are of your husband, father and son, and we are glad to have him here.

[The biographical information of Judge Hartz follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Harris L Hartz

2. Address: List current place of residence and office address(es).

Residence: Albuquerque, NM

Office: c/o Int'l Brotherhood of Teamsters  
25 Louisiana Ave. NW  
Washington, D.C. 20001

3. Date and place of birth.

January 20, 1947; Baltimore, MD

4. Marital Status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

Married to Deborah Dillingham, Cabinet Secretary for the New Mexico Children, Youth, & Families Department, PERA Building, P.O. Drawer 5160, Santa Fe, NM 87502-5160.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Harvard College 1963-67, AB (summa cum laude) received in June 1967  
Harvard Law School 1969-72, JD (magna cum laude) received in June 1972

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1999 - present	Stier, Anderson, & Malone, L.L.C. Skillman, N.J. -- employee
<i>judge - 11 yrs</i> 1988-99	New Mexico Court of Appeals Albuquerque, NM -- judge and chief judge
1987-88	New Mexico State Racing Cmsn. Albuquerque, NM -- chair
<i>att - 6 yrs</i> 1982-88	Miller, Stratvert, & Torgerson, PA Albuquerque, NM -- shareholder, director, and employee
<i>att - 3 yrs</i> 1979-82	Poole, Tinnin, & Martin, PA Albuquerque, NM -- employee
<i>att - 3 yrs</i> 1976-79	Governor's Organized Crime Prevention Commission Albuquerque, NM -- counsel, then executive director
1976	University of Illinois College of Law Champaign, IL -- visiting professor
<i>AUSA - 3 yrs</i> 1972-75	United States Attorney for NM Albuquerque, NM -- AUSA
1969, 1970	New Jersey Attorney General West Trenton, NJ - summer intern
1968-69	<u>Bergen Record</u> Hackensack, N.J. - reporter
1968	Javits for Senate Campaign New York, NY - campaign research
1967	Harvard Center for Cognitive Studies Cambridge, MA - research ass't
1985 - present	Hartz Family Partnership Albuquerque, NM
1992-98	Rotary Club of Albuquerque Albuquerque, NM - pres., director

1992-94	Congregation Albert Albuquerque, NM - board member
1990-93	NM Anti-Defamation League of B'nai B'rith Albuquerque, NM - board member
1981-82	Albuquerque Committee on Foreign Relations Albuquerque, NM - chair
1977-78	Harvard Club of NM, vice president

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

National Merit Scholar  
Phi Beta Kappa  
Woodrow Wilson Society Fellowship  
National Science Foundation Fellowship

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

New Mexico Bar Association  
District of Columbia Bar Association  
Albuquerque Bar Association  
Albuquerque Lawyers Club  
American Bar Association:  
Board of Editors, Litigation Magazine  
Advisory Committee to Standing  
Committee on Law and National  
Security  
Appellate Judges Conference:  
Appellate Practice Committee  
Chief Judges Education Committee  
Executive Committee, Council of  
Chief Judges

American Judicature Society  
 American Law Institute  
 Federalist Society

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying:

American Bar Association  
 D.C. Bar Association  
 New Mexico Bar Association

Other:

American Law Institute  
 Capitol Hill Club  
 Congregation Albert  
 Federalist Society  
 Hispanic Culture Foundation  
 Harvard Club of Washington, D.C.  
 Rio Grande Foundation, Board of Legal Advisers  
 Ripon Society  
 Rotary Club of Albuquerque  
 Teamsters Local 560 (honorary)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New Mexico State Courts	10/72 - present
D.C. Courts	10/00 - present
Tenth Cir. Ct. of Apps	12/72 - present
U.S. Dist. Ct. for NM	10/72 - present

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

(Numbered items are attached.)

1. Police Practices and the Threatened Destruction of Tangible Evidence, 84 Harv. L. Rev. 1465 (1971)
2. Supreme Court Case Note, Palmer v. Thompson, 85 Harv. L. Rev. 86 (1971) (editor)
3. Supreme Court Case Note, Dutton v. Evans, 85 Harv. L. Rev. 188 (1971)
4. Health Regulation of Naturally Hazardous Foods: The FDA Ban on Swordfish, 85 Harv. L. Rev. 1025 (1972) (editor)
5. Developments in the Law, The National Security Interest and Civil Liberties, 85 Harv. L. Rev. 1130 (1972) (editor)
6. Criminal Law and Procedure, 11 NM L.Rev. 85 (1981)
7. Appendix to Chapter V, "A Note on Regulatory Taxes," in Stanley S. Surrey, Pathways to Tax Reform (Harv. Univ. Press 1973).

Appendix I contains a supplemental list of publications and speeches.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. April 17, 2001

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge, New Mexico Court of Appeals, 1988-99  
I was appointed by the Governor and was retained in retention elections in 1990 and 1998. The court is the intermediate appellate court of the state; almost all appeals go directly to the court of appeals.



Chief Judge, N.M. Court of Appeals; 1997-99  
Elected by the other members of the court

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

- (1) Cheesecake Factory v. Baines, 964 P.2d 183 (1998)  
Jaramillo v. City of Albuquerque, 958 P.2d 1244 (1998)  
Venaglia v. Kropinak, 956 P.2d 824 (1998)  
In re Estate of Gilmore, 946 P.2d 1130 (1997)  
Ford v. New Mexico Dep't of Pub. Safety, 891 P.2d 546 (1994)  
Medina v. Graham's Cowboys, 827 P.2d 859 (1992)  
Hakkila v. Hakkila, 812 P.2d 1320 (1991)  
State v. Bolton, 801 P.2d 98 (1990)  
State v. Altgilbers, 786 P.2d 680 (1989)  
Sandoval v. Martinez, 780 P.2d 1152 (1989)

*Reversals*

- (2) Kennedy v. Dexter Consol. Sch., 10 P.3d 115 (NM 2000) (In a civil rights case involving strip searches of students, the NM Supreme Court reversed on several grounds: holding that the law had been clearly established at the time of the search that individualized suspicion was needed before requiring a student to strip to his underwear for a search; that there was sufficient evidence to establish liability of several defendants; and that an erroneous instruction was harmless error.)

Conoco v. Taxation & Revenue Dep't., 931 P.2d 730 (NM 1996) (In a case involving state taxation of dividends received from a foreign subsidiary, the NM Supreme Court reversed a ruling in which we had simply applied an earlier panel ruling.)

State ex rel. Udall v. Public Employees Retirement Bd., 907 P.2d 190 (NM 1995) (The NM Supreme Court reversed our ruling that a pension for legislators violated the constitutional prohibition against any compensation, perquisite, or allowance other than per diem and mileage.)

Leyba v. Whitley, 907 P.2d 172 (NM 1995) (Contrary to our ruling in a legal malpractice case, the NM Supreme Court held that the attorney for the personal representative in a wrongful death case had a duty to protect the interests of the statutory beneficiaries in receiving proceeds of the claim.)

Mireles v. Broderick, 872 P.2d 863 (NM 1994) (Contrary to our ruling, the NM Supreme Court held that the plaintiff's proposed res ipsa loquitor instruction in a medical malpractice action was a legally correct statement of that theory of the case.)

\* State v. Alberico, 861 P.2d 192 (NM 1993) (Contrary to our ruling, the NM Supreme Court held that expert testimony regarding post traumatic stress disorder was admissible to prove that the alleged victim had been raped.)

Highlands Univ. v. Baca, 824 P.2d 310 (NM 1992) (Contrary to our ruling, the NM Supreme Court held that the worker had obtained sufficient compensation benefits to be entitled to an award of attorney fees.)

Romero v. State, 815 P.2d 628 (NM 1992) (Contrary to our ruling, the NM Supreme Court held that the trial court had properly excluded evidence of the passenger's intoxication, the state could be liable for the road defect at issue, and expert testimony was admissible regarding the danger of the highway curve.)

Peralta v. State, 808 P.2d 637 (NM 1991) (The NM Supreme Court reversed our ruling that had affirmed dismissal of an appeal of a DWI conviction from metropolitan court to district court. The Supreme Court held that the defendant's failure to be prepared in district court was not chargeable to the

defendant because his public defender should have been prepared.) (reversed opinion is attached)

Herman v. Miners' Hospital, 807 P.2d 734 (NM 1991) (In a workers' compensation case, the NM Supreme Court held that we had erred in ruling that a hospital did not have knowledge of the cause of its employee's heart attack, and therefore it reversed our ruling that the claim was barred by the statutory notice requirement and the statute of limitations.) (reversed opinion is attached)

Salandre v. State, 806 P.2d 562 (NM 1991) (The NM Supreme Court held that we had erred in ruling that the defendant's right to a speedy trial had not been violated. In particular, the Supreme Court stated that we had misconstrued the presumption of prejudice that arises from delay and had improperly imposed on the defendant the burden of proving prejudice.) (reversed opinion is attached)

California First Bank v. State, 801 P.2d 646 (NM 1990) (In a case arising under the state tort claims act, the NM Supreme Court held that our opinion had too narrowly construed the scope of vicarious liability of a government agency. The Supreme Court also criticized our analysis of the intent requirement for battery and the scope of the duty of law enforcement officers to enforce the law.) (reversed opinion is attached)

City of Sunland Park v. Santa Teresa Concerned Citizens Ass'n, 792 P.2d 1138 (NM 1990) (Contrary to our ruling, the NM Supreme Court held that there was insufficient evidence to support the challenged annexation.)

County of Los Alamos v. Tapia, 790 P.2d 1017 (NM 1990) (Contrary to our ruling, the NM Supreme Court held that double-jeopardy doctrine did not prohibit retrial of a defendant when the trial judge had dismissed the complaint after improperly suppressing all the prosecution evidence during the trial.) (reversed opinion is attached)

- (3) Doe v. Leach, 988 P.2d 1252 (1999)  
Archuleta v. LaCuesta, 988 P.2d 883  
 (1999) (concurrency)  
Sanders v. Montoya, 982 P.2d 1064 (1999)  
State v. Castillo-Sanchez, 984 P.2d 787 (1999)  
State v. Reyes-Arreola, 984 P.2d 775 (1999)  
Dunn v. McFeeley, 984 P.2d 760 (1999)  
State v. Dawson, 983 P.2d 421 (1999)  
Ramah Navajo Sch. Bd., Inc. v. New Mexico Taxation  
 & Revenue Dep't, 977 P.2d 1021 (1999)  
State v. Gonzales, 975 P.2d 355 (1998)  
State v. Foster, 967 P.2d 852 (1998)  
State v. Munoz, 965 P.2d 349 (1998)  
State v. Snyder, 967 P.2d 843 (1998) (concurrency)  
State v. Wagoner, 966 P.2d 176 (1998)  
Udall for State v. Montoya, 968 P.2d 784 (1998)  
Jaramillo v. City of Albuquerque, 948 P.2d 1244  
 (1998)  
Kennedy v. Dexter Consol. Sch., 955 P.2d 693  
 (1998)  
Welch v. Sandoval County Valuation Protests Bd., 945  
 P.2d 452 (1997)  
State v. Marquart, 945 P.2d 1027  
 (1997) (concurrency)  
State v. Martinez, 940 P.2d 1200 (1997)  
State v. Apodaca, 940 P.2d 478 (1997)  
State v. LaMadrid, 943 P.2d 110 (1997)  
State v. Mariano R., 934 P.2d 315 (1997)  
Mieras v. DynCorp, 925 P.2d 518 (concurrency)  
Does I Through III v. Roman Catholic Church of the  
 Archdiocese, 924 P.2d 273 (1996)  
Wilson Corp. v. State ex rel. Udall, 916 P.2d 1344  
 (1996)  
State v. Freed, 915 P.2d 325 (1996)  
City of Albuquerque v. Westland Dev. Co., 909 P.2d  
 25 (1995)  
State v. Arrington, 897 P.2d 241 (1995)  
State v. Gutierrez, 894 P.2d 395 (1995)  
Andrews v. Stallings, 892 P.2d 611 (1995)  
 (concurrency)  
State v. Wittgenstein, 893 P.2d 461 (1995)  
State v. Glen Slaughter & Assocs., 889 P.2d 254  
 (1994)  
State v. Garcia, 887 P.2d 767 (1994)  
State v. Armijo, 887 P.2d 1269 (1994)  
Apodaca v. State of New Mexico, Taxation & Revenue  
 Dep't, 884 P.2d 515 (1994)  
Town of Bernalillo v. Garcia, 884 P.2d 501 (1994)

State v. Franks, 889 P.2d 209 (1994)  
State ex rel. Udall v. Public Employees Retirement Bd., 882 P.2d 548 (1994)  
State v. Vargas, 873 P.2d 280 (1994)  
State v. O'Kelley, 878 P.2d 1001 (1994)  
New Mexico Taxation & Revenue Dep't v. Whitener, 869 P.2d 829 (1993) (dissent)  
State v. Ramzy, 867 P.2d 418 (1993)  
State v. Hernandez, 865 P.2d 1206 (1993)  
State v. Swavola, 840 P.2d 1238 (1992)  
State v. Powell, 839 P.2d 139 (1992)  
State v. Gibson, 828 P.2d 980 (1992)  
State v. Johnson, 824 P.2d 332 (1991) (dissent)  
State v. Orosco, 833 P.2d 1155 (1991) (concurrency)  
State v. Vasquez, 815 P.2d 659 (1991) (dissent)  
State v. Edmondson, 818 P.2d 855 (1991)  
State v. Delgado, 815 P.2d 631 (1991)  
Garcia v. Las Vegas Medical Ctr., 816 P.2d 510 (1991)  
State v. Apodaca, 814 P.2d 1030 (1991)  
State ex rel. Stratton v. Roswell Indep. Sch., 806 P.2d 1085 (concurrency)  
Board of County Commissioners v. Padilla, 804 P.2d 1097 (1990)  
State v. Bolton, 801 P.2d 98 (1990)  
State ex rel. Angel Fire Home & Land Owners Ass'n v. South Cent. Colfax County Special Hosp. Dist., 797 P.2d 285 (1990)  
State v. Therrien, 794 P.2d 735 (1990)  
State v. Gaddy, 792 P.2d 1163 (1990) (dissent)  
State v. Crislip, 795 P.2d 1108 (1990)  
State v. Ciarlotta, 793 P.2d 1350 (1990)  
State v. Tartaglia, 791 P.2d 76 (1990) (dissent)  
State v. Valdez, 790 P.2d 1040 (1990)  
State v. Whitaker, 797 P.2d 275 (1990)  
State v. Brazeal, 790 P.2d 1033 (1990)  
State v. Tzethlikai, 785 P.2d 282 (1989)  
State v. Altgilbers, 786 P.2d 680 (1989)  
State v. James, 784 P.2d 1021 (1989) (dissent)  
State v. Chamberlain, 783 P.2d 483 (1989)  
State v. Benjamin C., 781 P.2d 795 (1989)  
State v. Johnston, 779 P.2d 556 (1989)  
State v. Helms, 779 P.2d 550 (1989)  
Smith v. Artesia, 772 P.2d 373 (1989)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Chair, New Mexico State Racing Commission 1987-88  
(appointed)

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No, I did not clerk.

2. whether you practiced alone, and if so, the addresses and dates;

No, I did not practice alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1972-75	Assistant U.S. Attorney, 500 Gold SW, Albuquerque, NM
1976	Visiting Assistant Prof. of Law, University of Illinois College of Law, 504 E. Pennsylvania Ave., Champaign, Ill.
1976-79	Governor's Organized Crime Prevention Commission (no longer in existence), Sunshine Building, Albuquerque, NM (Counsel, 1976-77; executive director, 1977-79)

1979-82 Poole, Tinnin, & Martin (no longer in existence);  
Second and Central NW, Albuquerque, NM; associate

1982-88 Miller, Stratvert, & Torgerson; 500 Marquette NW,  
Ste. 1100; Albuquerque, NM 87102; (associate,  
1982-83; shareholder and director, 1983-88)

1988-99 Judge, New Mexico Court of Appeals, 1117 Stanford  
NE, Albuquerque, NM 87131 (Chief Judge 1997-99)

1999-present Stier, Anderson, & Malone L.L.C., 174 Tamarack  
Cir., Skillman, NJ, 08558 (special counsel)

- b. 1. What has been the general character of your  
law practice, dividing it into periods with  
dates if its character has changed over the  
years?

As an assistant US Attorney, I was primarily  
a prosecutor, although I handled a few civil  
matters.

As a professor, I taught an evidence course  
and a seminar on grand juries.

With the Crime Commission, I directed  
investigations and hearings on the organized  
crime threat in the state.

With the Poole firm, I primarily engaged in  
commercial litigation, although I handled a  
few tax and business-law matters.

With the Miller firm, I was a litigator.  
Most of my work was insurance defense (the  
great bulk of which was medical malpractice),  
although more than a third of the work was  
commercial litigation, primarily for banks.

With the Stier firm, I am working on an anti-  
corruption project with the Teamsters Union.  
My chief responsibility is guiding the  
creation of a code of conduct for the union  
and an internal enforcement-and-compliance  
system.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My Poole Firm clients were primarily small local businesses. The Miller Firm clients were primarily insurance companies; my insurance defense work was primarily for the statewide physician-owned malpractice carrier; my commercial clients were primarily local banks. With the Stier firm, virtually all my work has been for the Teamsters Union, although I have worked on a motion for rehearing for one other client.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As a federal prosecutor I was frequently in federal court. I recall only one state-court appearance.

With the crime commission, I was occasionally in state court, never federal court.

With the Poole Firm, I was occasionally in court, about evenly divided between state and federal.

With the Miller Firm, I was frequently in court, about 90% state court.

I have not been in court with the Stier Firm.

2. What percentage of these appearances was in:
  - (a) federal courts; 50%
  - (b) state courts of record; 49%
  - (c) other courts. 1%
3. What percentage of your litigation was:
  - (a) civil; 70%
  - (b) criminal. 30%



4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

17 as sole counsel  
7 as chief counsel  
7 as associate counsel

5. What percentage of these trials was:

(a) jury;

65%

(b) non-jury.

35%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- (i) United States v. Riebold, 557 F.2d 697 (10<sup>th</sup> Cir. 1977). In 1974-75 I conducted the grand jury investigation and was chief counsel at the ten-week trial of E.M. Riebold and Donald Morgan. They were convicted by a jury of numerous charges of fraud and banking violations. The case was tried in United States District Court for New Mexico by Judge H. Vearle Payne. My co-counsel was Lyman Sandy, 500 Marquette NW, Ste. 1100, Albuquerque, NM 87102 (505-842-1950). Morgan's attorney

was Donald Wilson, now deceased.  
 Riebold's attorney was William Deaton, now  
 a US magistrate at 333 Lomas NW,  
 Albuquerque, NM 87102 (505-348-2300).

- (ii) United States v. Tokoph, 514 F.2d 597 (10<sup>th</sup> Cir. 1975). In 1973-74 I conducted the grand jury investigation of David Tokoph and others in a fraud and bank swindle. Tokoph was convicted in a jury trial before Federal District Judge H. Vearle Payne. My co-counsel was Don Svet, now a federal magistrate at 333 Lomas NW, Albuquerque, NM 87102 (505 348-2340). Opposing counsel was Alfred M. Carvajal; I believe he is now deceased.
- (iii) From 1973-75 I was the assistant US Attorney in charge of handling challenges to INS searches in New Mexico, particularly those at border patrol checkpoints. A large part of the New Mexico defense bar, as well as a number of out-of-state attorneys, were opposing counsel in these matters. Matters were heard before Federal District Judges H. Vearle Payne, Edwin Mechem, and Howard Bratton. Four of the cases reached the United States Supreme Court in 1976: United States v. Morrison, 429 U.S. 1; United States v. Rose, 429 U.S. 5; United States v. Dieter, 429 U.S. 6; United States v. Kopp, 429 U.S. 121.
- (iv) United States v. Stricklin, 534 F.2d 1386 (10<sup>th</sup> Cir. 1976). I handled the prosecution and appeal of this case. Stricklin was a major marijuana smuggler, convicted in a non-jury trial before Federal District Judge Edwin Mechem. His attorney was Lee Chagra, who was murdered.
- (v) Wells Fargo Business Credit v. American Bank of Commerce, 780 F.2d 871 (1985). I represented the bank with respect to claims against it by Wells Fargo and a

third-party claim by the bank against Employers of Wausau on a bankers blanket bond. The bank settled with Wells Fargo and prevailed against Wausau in a non-jury trial before Federal District Judge Juan Burciaga. The attorneys for Wausau were Peter Johnstone, 7021 Prospect Pl. NE, Albuquerque, NM, 87110 (505 884-1899) and Roswell Bottum, 3200 Wilshire Blvd #1500, Los Angeles, CA (213 487-0402).

- (vi) B&W Construction Co. v. N.C. Ribble Co., 734 P.2d 226 (NM 1987). I represented GATX Corp., which had acquired Ribble. We unsuccessfully attempted to collect from B&W and its two guarantors--Bob Bowers and Paul Wood--for charges incurred in leasing construction equipment. My co-counsel was Stephen Williams, 500 Marquette NW, Ste. 1100, Albuquerque, NM 87102 (505-842-1950). The attorney for B&W and Bowers was Joe Mercer, who is deceased. The attorney for Wood was Jennie Behles, 400 Gold Ave. SW, Albuquerque, NM, 87102 (505 243-9756). The jury trial was before Judge John Brennan in New Mexico State District Court for Bernalillo County.
- (vii) Hamel v. Winkworth, 692 P.2d 58 (NM App. 1984). I represented Dr. Winkworth against a claim of malpractice in the performance of a hysterectomy. The jury trial was before Judge Phillip Ashby in New Mexico State District Court for Bernalillo County. I handled almost all pre-trial matters and shared trial duties with my co-counsel, Ranne Miller, 500 Marquette NW, Ste. 1100, Albuquerque, NM 87102 (505-842-1950). Opposing counsel was William Ferguson, 411 Central Ave. NW, Albuquerque, NM, 87102 (505 243-5566). The plaintiff recovered a jury verdict, but for considerably less than demanded.
- (viii) Greenberg v. Gerety, No. CV-85-07981, Second Judicial District Court, County of Bernalillo, State of New Mexico. In 1985-

87 I represented Dr. Gerety and his medical group in defense of a claim of malpractice with respect to repair of an aortic aneurysm. I handled all discovery and motions and was planning to be chief counsel at trial. The case was settled on the eve of trial. My co-counsel was Ranne Miller (see #vii). The other defendants were represented by Rob Lasater, 201 3d NW, Albuquerque, NM, 87102 (505 765-5900). Plaintiff's attorney was Steve Schonberg, 1005 Luna Cir. NW, Albuquerque, NM, 87102 (505 242-8722). The judge was State District Judge Ross Sanchez.

(ix) Harrison v. Murrel, No. 83-08930, Second Judicial District Court, County of Bernalillo, State of New Mexico. In 1984-86 I represented Dr. Livingston Parsons, who was a co-defendant accused of misdiagnosing pancreatic cancer and performing an operation at which iodine seeds were implanted. I handled all motions and discovery and was planning to be chief counsel at trial. The case settled. The plaintiff's counsel was Stephen Schonberg (see #viii). The attorneys for the other defendants were Richard Civerolo, 20 First Plaza NW, #500, Albuquerque, NM 87102 (505 842-8255); Mark Meiering and Rob Lasater, 201 3<sup>rd</sup> NW, Albuquerque, NM 87102 (505 765-5900); and Bruce Black, now a Federal District Judge at 333 Lomas N.W., Albuquerque, NM, 87102 (505 348-2260). The judge was State District Judge Richard Traub.

(x) Estate of Vega v. Union Texas Petroleum Co., No. CV 83-236, Fifth Judicial District Court, Lea County, State of New Mexico. In 1985-86 I represented Union Texas in a suit claiming that it negligently caused an accident in the oil field. The case settled during trial. I handled all discovery. Co-counsel Don Maddox, now a State District Judge at 100

North Main #6-C, Lovington, NM 88260 (505 396-4430), acted as local counsel and conducted voir dire. Opposing counsel for the plaintiffs were Lowell Stout, P.O. Box 716, Hobbs, NM 88240 (505 393-1555), Timothy Cusack, P.O. Box 250, Roswell, NM 88202-0250 (505 622-3542), and Clifford Payne, P.O. Box 849, Lovington, NM, 88260 (505 396-3004)

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation. In this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant legal activities have been as judge and chief judge on the New Mexico Court of Appeals. I have participated in numerous panel decisions and authored about 300 published opinions. I am particularly proud of my work as chief judge. During my term the court became significantly more timely in disposing of appeals, instituted a successful settlement program with mediation by a court employee, began using Total Quality Management (TQM) techniques, and took important steps to improve working conditions for employees.

I have also been greatly rewarded by my work with the American Law Institute. I have been an active participant at annual meetings and with member consultative groups for a number of ALI projects. It has been a particular honor to participate as an Adviser to the proposed Restatement (Third) of Agency with the top agency scholars in the country.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have vested in a judicial retirement plan of the State of New Mexico. I also had a 401(k) plan with the State of New Mexico, in which I am vested.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Before taking office I would want to review the pertinent law and scholarship on the question of disqualification and recusal. In addition, any time I have had a relationship with a party, financial or otherwise, I will find an authority (probably a fellow judge) to consult. Of course, some financial or personal relationships are so significant that there will be no question that I must recuse from the case; but my experience as a judge for 11 years has taught me that difficult questions will always arise. If a financial interest proves to be too likely to require me to recuse from cases, I will dispose of the interest.

Because I was a judge for 11 years before taking on my current position, in which I have had only two clients, I doubt that relationships with former clients will pose a problem. My chief concern is with my investments. They did not cause a problem with my prior judicial work, but the docket of a federal appeals court may be sufficiently different from my former caseload that problems may arise. At this time, I have no reason to believe that any of my investments will pose a problem.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached statement and schedules

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

- 180 Bush for President, volunteer legal counsel for NM
- 170 Sy Spaulding for US Senate, prepared paper on urban transportation
- 169 Fierovante Perrota for New York City Comptroller, advance man
- 168 Jacob Javits for US Senate, campaign research

I also volunteered on a spot basis in a number of Republican campaigns when I was in private practice.

10-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Hartz, Harris L	<b>2. Court or Organization</b> Tenth Circuit Court of Appeals	<b>3. Date of Report</b> 06/21/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge Nominee	<b>5. Report Type (check type)</b> X Nomination, Date 06/21/2001 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 06/06/2001
<b>7. Chambers or Office Address</b> 25 Louisiana NW Washington, D.C. 20001	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Family Partnership
2 Employee	Stier, Anderson & Malone LLC
3 Trustee	Trust No. 1

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1	My judicial pension from the State of New Mexico has vested and will be distributed when I am age-eligible.
2	
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	State of New Mexico judge	61,791
2 2000	Stier, Anderson & Malone, LLC employee	164,461
3 2001	Stier, Anderson & Malone, LLC employee	80,000
4 1999	State of New Mexico employee	



<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Hartz, Harris L	06/21/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1	exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
1	exempt		
2			
3			

**VI. LIABILITIES**

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE
1	St. Albans School	Tuition, room, and board	K
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Hartz, Harris L.	Date of Report 06/21/2001
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

**VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-J)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	Exempt				
					If not exempt from disclosure				
					(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Trust 1	E	Div. and int.	O	T					
2 --BRKA									
3 --OIB									
4 --NUV									
5 --PRW									
6 --SPI									
7 --SO									
8 --TOS									
9 --ATF									
10 --MIR									
11 --Farmington NM Pwr Rev, due 1/13, muni bd									
12 --Unit IMIT Muni Ins. Long Term 86 QPS, bond fund									
13 --Unit IMIT Muni Ins. Long Term 40 QPS, bond fund									
14 --Unit IMIT Muni Ins. Long Term 39 QPS, muni bd fund									
15 --Unit MIT Muni Nat'l Long Term I SPS, muni bd fund									
16 --Unit MIT Muni Nat'l Long Term 1C SPS, muni bd fund									
17 --Unit Muni Bd Trust Series 7, muni bd fund									
1 Ino/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Hartz, Harris L.				Date of Report 06/21/2001			
<b>VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	Exempt			
						If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
18 --TWCUX									
19 --FIIX									
20 --JANSX									
21 --NGUAX									
22 --NPRTX									
23 --AMGBX									
24 --GLBBX									
25 --TGRBX									
26 --USGBX									
27 --MSDW World Wide Income B, mutual fund									
28 --DINEX									
29 --San Juan County real estate									
30 --Templeton Global Government Income Trust									
31 Trust 2	E	Dividend	M	T					
32 --Fidelity Advisor Equity Grth I #86, mutual fund									
33 --SEI Large Cap Value Fd, mutual fd									
34 --SEI Small Cap Growth Fd, mutual fd									
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Hartz, Harris L.		Date of Report 06/21/2001		
<b>VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>						
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period	
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	Exempt
						If not exempt from disclosure
						(2) Date: Month-Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)						
35 --SEI Small Cap Value Fd, mutual fd						
36 --Vanguard Special Port Healthcare #52, mutual fd						
37 --SEI Int'l Equity Fd, mutual fd						
38 --SEI Prime Obligation fund, mutual fd						
39 Trust 3	E	Rent, intst*	M	W		
40 --Parcel 1 Unimproved real estate in San Juan County, NM						
41 --Parcel 2 Unimproved real estate in San Juan County, NM						
42 --Note payable from Paul Gordy						
43 Trust 4	E	Dividend	N	T		
44 --BRKA						
45 --Fidelity Asset Mgr., mutual fd						
46 --ILAF						
47 --DIVBX						
48 --TAXDX						
49 --VADEX						
50 --OPTRX						
51 --VZ						
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market						

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Hartz, Harris L	Date of Report 06/21/2001

**VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	Exempt			
						If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
52 --FDLBX									
53 Trust 5	E	Dividend	N	T					
54 --BRKA									
55 --CMP									
56 --SBF									
57 --MSDW Government Inc. Trust, cmn									
58 --DIVRX									
59 --FDLBX									
60 --ILAF									
61 --VADBX									
62 --Fidelity Asset Mgr., mutual fd									
63 --OPTRX									
64 --MSDW Municipal Income Trust II									
65 403B account	A	Dividend	J	T					
66 --PGRMX									
67 401(k) account 1		None	L	T					
68 --FMAGX									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Hartz, Harris L				Date of Report 06/21/2001			
<b>VII. Page 5 INVESTMENTS and TRUSTS – income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	Exempt				
					If not exempt from disclosure				
					(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 401(k) account 2		None	M	T					
70 --DRTCX									
71 --FGRIX									
72 --FMAGX									
73 --NMANX									
74 State Retirement Account 1	B	Interest	K	T					
75 State Retirement Account 2	B	Interest	K	T					
76 Individual Retirement Annuity	A	Dividend	M	T					
77 --Aetna Balanced VP									
78 --Aetna Fixed Account									
79 --Aetna GET Fund, Series D									
80 IRA Account 1:	C	Dividend	L	T					
81 --SPIBX									
82 --USGBX									
83 --DIVBX									
84 --EUGBX									
85 --MSDW Liquid Asset Fund, mutual fd									
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2 Val Codes:</b> J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$500,001 or more									
<b>3 Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Hartz, Harris L		Date of Report 06/21/2001					
<b>VII. Page 6 INVESTMENTS and TRUSTS – income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	Exempt				
					If not exempt from disclosure				
					(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
86 --US Treasury Bonds									
87 IRA Account 2	C	Dividend	K	T					
88 --AMOBX									
89 --MSDW Liquid Asset Fund, mutual fd									
90 --USGBX									
91 --US Treasury Bond, due 11/12									
92 Annuity 1		None	J	T					
93 --Aetna GET Fund Series E									
94 Northbrook Life Ins. Co. annuity	B	Interest	K	T					
95 Northwestern Mutual Life Annuity	A	Dividend	K	T					
96 C.M. Life Ins. policy	C	Interest	L	T					
97 MONY Life Insurance Policy	A	Dividend	K	T					
98 Security Connecticut Life Ins. Policy #1	B	Interest	K	T					
99 Security Connecticut Life Insurance Policy #2	B	Interest	K	T					
100 BABEX	C	Dividend	L	T					
101 EVGFX	C	Dividend	J	T					
102 OPPAX	D	Dividend	K	T					
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Hartz, Harris L				Date of Report 06/21/2001			
<b>VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	Exempt			
						If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
103 PZMCX	B	Dividend	J	T					
104 SCINX	C	Dividend	K	T					
105 VNINX	C	Dividend	K	T					
106 MSDW Active Assets Money Trust, mutual fd	B	Dividend	K	T					
107 AMOBX		None	J	T					
108 DIVBX	D	Dividend	L	T					
109 EUGBX	A	Dividend	J	T					
110 GLRBX	A	Dividend	K	T					
111 UTILBX	B	Dividend	K	T					
112 BRKGB		None	K	T					
113 CHTR		None	J	T					
114 CSCO		None	J	T					
115 MRK	A	Dividend	J	T					
116 OIA	A	Dividend	J	T					
117 NYT	A	Dividend	J	T					
118 Technology Commercialization Int'l, cmn		None	K	W					
119 Unit MIT Municipal Nat'l Long Term 116 MPS, investment trust	A	Interest	J	T					
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more									
<b>2 Val Codes:</b> J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
<b>3 Val Mth Codes:</b> Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									



FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Hartz, Harris L				Date of Report 06/21/2001			
<b>VII. Page 8 INVESTMENTS and TRUSTS -- income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>									
A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	Exempt			
						If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
120 Unit MIT Municipal Nat'l Long Term 71 MPS, investment trust	A	Interest	J	T					
121 Unit MIT Municipal Nat'l Long Term 94 MPS, investment trust	A	Interest	J	T					
122 Unit MIT Municipal Nat'l Long Term 190 MPS, investment trust	A	Interest	J	T					
123 Sun Trust Bank account	A	Interest	J	T					
124 Wells Fargo Bank account	B	Interest	K	T					
125 State of Israel Bonds	A	Interest	J	W					
126 US Savings Bonds	C	Interest	L	U					
127 US Treasury Bills	C	Interest	K	T					
128 Mosler Inc., bond	B	Interest	J	T					
129 Tennis Club of Albuquerque debenture	A	Interest	J	T					
130 American Real Estate Partners, limited ptrshp	A	Dividend	J	U					
131 Family partnership, 1/10 share in mortgage note	A	Interest	J	U					
132 Interest in Harper Hill Trust (real est--San Juan County, NM)	A	**	K	W					
133 Discover Bank CD	B	Interest							
134									
135									
136									
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$500,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Hartz, Harris L	Date of Report 06/21/2001
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### VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

\* The income of Trust 3 includes capital gain from the sale of real estate to Paul Gordy and the sale of a pipeline easement to Williams Co.

\*\*The income of the Harper Hill Trust includes sale of a pipeline easement to Dugan Productions, Inc.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Hartz, Harris L	Date of Report 06/21/2001
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#### SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

##### PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Trustee Trust No. 2	
5	Trustee Trust No. 3	

##### PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000 State of New Mexico	employee	
6	2001 State of New Mexico	employee	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hartz, Harris L	06/21/2001

**IX. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Harris L Hartz Date 6/21/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## FINANCIAL STATEMENT

NET WORTH  
3/31/01

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	66	517	Notes payable to banks-secured		
U.S. Government securities-add schedule	114	380	Notes payable to banks-unsecured		
Listed securities-add schedule	1,123	018	Notes payable to relatives		
Unlisted securities--add schedule	68	680	Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others	10	867	Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule	31	484
Real estate owned-add schedule	489	000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	43	300			
Cash value-life insurance	143	552			
Other assets itemize:					
Retirement accounts	192	157			
Annuities	64	888			
Real Estate Partnership	1	493	Total liabilities	31	484
			Net Worth	2,286	368
Total Assets	2,317	852	Total liabilities and net worth	2,317	852
CONTINGENT LIABILITIES	NONE		GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule) No.		
On leases or contracts			Are you defendant in any suits or legal actions? No		
Legal Claims			Have you ever taken bankruptcy? No		
Provision for Federal Income Tax					
Other special debt					

## CASH

Bank Account 1	32,090
Bank Account 2	4,483
Bank Account 3	17,783
CD	11,822
Account 3	79
Account 5	26
Account 9	234

## US GOVERNMENT SECURITIES

## Account 1:

20,000 US Treasury Bond Zero Coupon Due 11/15/06	\$15,510
10,000 US Treasury Bond Zero Coupon Due 11/15/07	7,368

## US Account:

10,000 six-month T-bill (9/01 maturity)	10,000
20,000 one-year T-bill (2/02 maturity)	20,000

## Account 8:

17,000 US Treasury Bond Zero Coupon (due 11/12)	9,216
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## US Savings Bonds:

Four 10,000 EE 7/88	41,472
10,000 EE 9/87	10,788
50 EE 4/00	26

## LISTED SECURITIES

3897.494	Babson Enterprise Fund	50,512
46.782	New York Times Co. Class A	1,837
617.29	Scudder International Fund S	26,093
1552.740	Vanguard Wellesley Income Fund	31,381

## Account 1 (IRA):

	MSDW Liquid Asset Fund	\$ 320
150.656	MSDW S&P 500 Index B	1,833
1310.779	MSDW US Gov't Secs B	11,784
226.946	MSDW European Growth B	3,277
275.266	MSDW Dividend Growth B	13,802
4,158	UNIT GSIF Gov't Ginnie Mae	119
	\$1PV I MPS	

## Account 2:

	Active Assets Money Trust	26,746
13	Berkshire Hathaway B	28,288
23	Chaparral Resources Inc.	65
50	Charter Comm. Class A	1,131
704	MSDW Muni Income Opp	6,047
1356.624	MSDW Global Div. Growth B	15,086
929.196	MSDW Utilities Fund B	16,270
150.870	MSDW European Growth B	2,179
101.557	MSDW American Opportunities B	2,667
937.923	MSDW Dividend Growth B	47,027
1273.979	Phoenix Zweig Managed Assets C	13,351
1932.481	Eaton Vance Growth Fd. A	10,919
678.672	Oppenheimer Global Fund	30,785
5	Unit MIT Municipal Nat'l Long Term	
	116 MPS	1,276
5	Unit MIT Municipal Nat'l Long Term	
	71 MPS	2,331
5	Unit MIT Municipal Nat'l Long Term	
	94 MPS	1,743
5	Unit MIT Municipal Nat'l Long Term	
	190 MPS	1,163
5,894	Unit GSIF Government Ginnie Mae	
	\$1PV G MPS	173

## Account 3 (Trust):

1	Berkshire Hathaway A	65,450
140	CMS Energy CP	4,143
700	MSDW Government Income TR	6,153
405	Salomon Bros. Fd. Inc.	5,569
31701.79	MSDW Liquid Asset Fund	31,702
2059.813	Oppenheimer Total Return Fund	22,040

476.395	MSDW Federal Sec. Tr. B	4,302
1026.197	MSDW Value-Added Eq. B	30,796
596.479	MSDW Dividend Growth B	29,907
2654.179	Fidelity Asset Manager	41,219

## Account 4 (Trust):

1	Berkshire Hathaway A	65,450
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## Account 5 (Trust):

1	Berkshire Hathaway A	65,450
619	Verizon Communications	30,517
30486.33	MSDW Liquid Asset Fund	30,486
2059.813	Oppenheimer Total Return Fund	22,040
742.255	MSDW Value-Added EQ B	22,275
421.769	MSDW Tax-Exempt Sec B	4,960
59.609	MSDW Dividend Growth B	2,989
2654.179	Fidelity Asset Manager	41,219

## Account 6 (401k):

585.450	Fidelity Magellan	61,180
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## Account 7 (403B):

492.998	Putnam Growth & Income CI-A	9,086
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## Account 8 (IRA):

	MSDW Liquid Asset Fund	3,593
1349.740	MSDW US Gov't Secs B	12,134
721.077	MSDW American Opportunities B	18,935
4,036	UNIT GSIF Government Ginnie Mae \$1PV I MPS	116

## Account 9:

9	Brinker Int'l Inc. COM	251
140	Cisco Systems Inc.	2,205
16	Costco WHSL Corp New COM	627
8	Walt Disney Company	229
30	Gateway Inc. Com	504
16	Hewlett-Packard CA	500
14	Intel Corp. Com	368

15	Ionics Inc.	390
16	Lakeland Industries Inc.	72
14	Merck & Co., Inc.	1,063
46	Worldcom Inc. Ga	857

## Account 10 (401K)

Neuberger Berman Manhattan Fund	13,817
Fidelity Growth & Income Portfolio	40,565
Dreyfus Premier 3d Century Fund	25,637
Fidelity Magellan Fund	56,017

## UNLISTED SECURITIES

	American Real Estate Partners, L.P.	4,991
	Cable TV Fund 14-B Ltd.	539
6,000	State of Israel Bond zero coupon (12/07)	3,750
6,000	State of Israel Bond zero coupon (10/03)	4,700
6,000	State of Israel Bond zero coupon (10/03)	4,700
10,000	Mosler Inc. SR NT Ser A (4/15/03)	5,000
3750 shs	Technology Communications Int'l	45,000

## NOTES RECEIVABLE

Paul Gordy (real estate contract)	8,000
Tennis Club of Albuquerque debenture	2,867

## REAL ESTATE

Home, Albuquerque, NM	300,000
Vacant lot 1, San Juan County, NM	45,000
Vacant lot 2, San Juan County, NM	120,000
¼ interest Harper Hill Trust, vacant land in San Juan, County	24,000



## AUTOS

1992 Nissan	1,800
1997 Nissan	6,800
1997 Nissan	4,700

## MISCELLANEOUS PERSONAL PROPERTY

30,000

## LIFE INSURANCE—cash value

C.M. Life Insurance	61,603
MONY	29,595
Security Connecticut Life #1	25,464
Security Connecticut Life #2	25,790
Standard Life & Casualty Ins. Co.	1,100

## OTHER ASSETS

Retirement Accounts:

State Retirement Account #1	31,280
State Retirement Account #2	48,174
Account 11 (IRA):	
Aetna Balanced VP-008	47,009
Aetna Fixed Account-027	44,685
Aetna GET Fund, Series D	21,009

Annuities:

Aetna GET Fund, Series E	12,066
Northbrook Annuity	23,723
Northwestern Mutual Life annuity	29,099

Hartz Family Partnership	1,493
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## NOTES PAYABLE

Mortgages to Muriel Hartz	31,484
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## III. GENERAL (PUBLIC)

An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Perhaps my most important activity in this regard has been any support and encouragement I have given my wife, who served as a school social worker for 18 years and has served the past five years in the state Children, Youth, and Families Department, first as director of the Protective Services Division and now as Cabinet Secretary.

I would like to think that my public service has helped the disadvantaged. As a judge, I took to heart the requirement of equal justice under law. In particular, I made every effort to be sure that pro se litigants had their issues considered and I helped initiate a project for handling pro se appeals. During my judicial tenure I was also concerned about representation of indigent defendants and spent significant amounts of time working with the state appellate defender to improve the services of that office. In addition, I was a facilitator at the First National Conference on Eliminating Racial & Ethnic Bias in the Courts. While a judge I served on the state ADL board and my temple board, and I was very active in the Rotary Club of Albuquerque, which has a strong program of charitable work (the Rotary Children's Garden project was initiated during my tenure as president of the club).

Before I became a judge my public service included work as a federal prosecutor, counsel and executive director of the Governor's Organized Crime Prevention Commission, and chair of the state racing commission. In all those law enforcement positions, the victims of the unlawful conduct being investigated were often the disadvantaged, and I was not reluctant to take on the powerful and the well heeled to ensure equal justice under law. I should also mention one special project that took many days of work: I prepared for, tried, and handled the appeal of a state bar disciplinary case against a lawyer who had improperly convinced a widowed

client to invest in the lawyer's business. See In re D'Angelo, 733 P.2d 360 (NM 1986).

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No, I have never belonged to such an organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no such committee. Senator Domenici forwarded my name, and at least one other, to the White House. After being interviewed by representatives of the White House Counsel's Office and the Department of Justice, I completed background forms and a background check was conducted. I was then nominated by the President.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No, no one has done so.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Every judge must always keep in mind that the judiciary is just one branch—the non-political branch—of the government. The duty of a court is to resolve the case before it, in accordance with the law. Judicial decisions may have far-reaching consequences, but they should not be political decisions. The decision-making process for judges is different in nature from the process by which the executive and legislative branches reach their decisions.

While the other two branches appropriately make policy judgments in reaching their decisions, the role of the judicial branch is to apply those judgments, not make its own determinations of what is good policy. A judge's role is to understand the meaning of the nation's laws and apply them to the case at hand, paying proper deference to the rulings of higher courts and stare decisis. When judges act with this understanding of their role, they may make unpopular decisions from time to time, but they will not be guilty of improper judicial activism.

## APPENDIX I

## SUPPLEMENTAL LIST OF PUBLICATIONS AND SPEECHES

8. The Four-year Term: An Alternative, Dunster Political Review, May 1966
9. Combating Organized Crime, An Investigation Commission in New Mexico, Police Chief, September 1977.
10. Letter to Editor, The New York Times, 2/18/68
11. Op-ed piece in Farmington (NM) Daily Times, 5/10/70
12. Letter to Editor, Judicature magazine, 2/79
13. Letter to Editor, Albuquerque Journal, c. 1979
14. Op-ed piece in Albuquerque Journal, c. 12/80
15. Op-ed piece in Albuquerque Journal, 12/24/81
16. Letter to Editor, Albuquerque Journal, 5/15/95
17. Letter to Editor, Albuquerque Journal, 8/27/98
18. Speech to New Mexico Sheriffs and Police Association, 10/15/78 (news article)
19. Speech to Southern New Mexico Press Club, c. 1978 (news article)
20. Panel presentation to National Association of State Racing Commissioners, 4/11/88 (news article)
21. Speech to Curry County Bar Association, Clovis, NM, 5/5/89 (news article and speech notes)
22. Presentation on preservation of error to UNM Law School Intersession Trial Practice Institute, 1/3/92 (lecture notes)
23. Presentation on avoiding common errors to NM Bar Association CLE, 5/9/92 (lecture notes and handout)

24. Presentation on Court of Appeals summary calendar at NM Bar Association Convention, 9/26/92 (lecture notes)
25. Presentation on New Mexico court system to newly elected municipal judges, 3/14/94 and 3/13/96 (lecture notes)
26. Panel presentation on opinion writing to 21<sup>st</sup> International Workers' Compensation College, Tucson, AZ, 4/19/94 (lecture notes and handout)
27. Presentation on Court of Appeals summary calendar at Technical-Vocational Institute, Albuquerque, NM, 2/7/95 (item in Legal Assistant Studies newsletter)
28. Address to NM Society of the Institute of Certified Financial Planners, 9/8/95 (speech notes)
29. Address on the judicial process to UNM Law School chapter of The Federalist Society, 4/17/96 (speech notes)
30. Panel Presentation on Ethics for the Appellate Practitioner, 7/26/96 (index card notes)
31. Acceptance speech for Republican nomination for NM Supreme Court, c. 8/96 (typed excerpts)
32. Address to a Rotary Club (not sure which) on challenges to NM judiciary, c. 10/96 (index card notes)
33. Campaign statement on KUNM radio, c. 11/96 (typed)
34. Speech on state of judiciary to San Juan Rotary Club, Farmington, NM, 5/27/97 (handwritten notes)
35. Law Day Address to Chaves County Bar Association, Roswell, NM, 5/1/98 (index card notes)
36. Presentation on the courts and criminal law to Leadership New Mexico, Taos, NM, 6/17/98 (index card notes)
37. Presentation to various county bar associations on the status of the NM Court of Appeals, 7-9/98 (index card notes)
38. Presentation on NM judicial system to newly elected magistrate judges, 11/16/98 (index card notes)

39. Presentation on Teamsters Code of Conduct to Teamster leaders, Washington, D.C., 7/27/00 (handwritten notes)
40. Speech on Teamsters project to Rotary Club of Albuquerque, 8/14/00 (index card notes)
41. Speech on Teamsters project to Teamster Local 745, Dallas, TX, 10/1/00 (index card notes)
42. Presentation on Teamsters Code of Conduct to Teamster leaders, Minneapolis, MN, 10/5/00 (handwritten notes)
43. Presentation on Teamsters Code of Conduct to Teamster General Executive Board, Washington, D.C., 1/19/01 (power point presentation)

I was a contributing editor to Black's Law Dictionary (7<sup>th</sup> ed.) for the letter P.

Judge let me start by asking you just a few questions. As you well know, there is a substantial disagreement about how some of the broad guarantees that are embodied in our Constitution, like equal protection and freedom of speech, are to be interpreted.

Some judges believe that the constitutional provisions stand for principles or values, and that judges should have some leeway or discretion in interpretation of those provisions. Others think that that kind of approach gives judges too much discretion.

I just wonder if you can tell me generally what your feeling is about that issue.

Judge HARTZ. Well, as a member of the New Mexico Court of Appeals, and I hope as a member of the Federal court, my duty would be to follow the approach taken by the United States Supreme Court. They have the very difficult decisions you are talking about, but the role of any inferior judge would be simply to apply the laws set forth in opinions of the U.S. Supreme Court.

Senator EDWARDS. Can you tell me whether you have a view in terms of your judicial approach about protection of privacy in cases like *Roe v. Wade* and *Griswold v. Connecticut*?

Judge HARTZ. My approach as a judge would be to apply the decisions by the United States Supreme Court to the best of my ability.

Senator EDWARDS. And what about the same issue with respect to equal protection, particularly in the context of race? Do you have any particular approach to that?

Judge HARTZ. I think all of us in this country feel very strongly about racial discrimination and oppose that, and that is the way the United States Supreme Court has been ruling for the most part. But in any event, I feel committed to apply the decisions handed down by the United States Supreme Court.

Senator EDWARDS. I noticed in looking at a note that you had written while you were—I guess you edited it, a note while you were at Harvard Law School, where you said, and I am quoting you now, “Equal protection is about the elimination of stigmatizing State action.” Does that remain your view today?

Judge HARTZ. If that is the one I—I assume that is the case note on *Palmer v. Thompson*.

Senator EDWARDS. I don’t have the citation here, so I don’t know.

Judge HARTZ. I expect that is the case. As the editor, I am not responsible for writing the language.

Senator EDWARDS. I understand that.

Judge HARTZ. My friend, Peter, Bombush, who is an attorney here in town, is the author of that, and I would just be there to—my role would be to make sure that it is properly analyzed. We would discuss matters, but those would represent his views, not mine. So I don’t remember that particular sentence, I am afraid, in any event.

Senator EDWARDS. That is actually not surprising. Having been involved in writing and editing law review notes, I don’t remember anything that was in them. That probably says good things about you.

One of the questions that was on the judicial questionnaire had to do with the issue of judicial activism, and I think I am quoting your answer now. You said, “Every judge must always keep in



mind that the judiciary is just one branch, the non-political branch of government.”

With that comment in mind, could you tell me what your view is about recent Supreme Court decisions? The New York Times has—I am quoting the New York Times now—has said that the present Supreme Court has “struck down more Federal laws per year than any Supreme Court in the last half century.”

Do you have any view with respect to that?

Judge HARTZ. In my work as a judge, I always employed a very strong presumption in favor of the constitutionality of legislative enactments, and I think that general presumption is applied by the United States Supreme Court, also. But to the extent that the U.S. Supreme Court has ruled statutes unconstitutional and applied certain doctrines to strike down those statutes, a member of any inferior court would be obligated to do the same.

Senator EDWARDS. Cass Sunstein, who is a well-known law professor—I don’t know if you are familiar with him or not.

Judge HARTZ. I am familiar with the name.

Senator EDWARDS. He wrote in the Times that we are now in the midst of a remarkable period of right-wing judicial activism. Do you agree with that statement?

Well, let me ask it another way. Let me ask it a little more innocuously.

Judge HARTZ. Thank you.

Senator EDWARDS. Do you personally have some explanation for why there has been such a high invalidation rate over the last few terms of the Court?

Judge HARTZ. I hadn’t thought about that. I am sure a lot of new doctrines in law usually come about because academics and others think about policy issues and write about it, and eventually it seeps its way into the judiciary. But I don’t have a theory behind it, no, Mr. Chairman. I am sorry.

Senator EDWARDS. For years, the prevailing view seemed to be that the sovereignty of States—this is on the issue of federalism—received enough protection from the political process from the influence of governors and Senators, for example, so courts didn’t need to intervene to try to protect State authority. It seems that the present Supreme Court has rejected that view.

Do you have a view about whether the—or what is your sense—I guess I will ask it that way—about whether the political process is adequate to protect States’ rights?

Judge HARTZ. Again, I said I think it is important for the judiciary to be very deferential to the legislative branch. I don’t think it would be appropriate for a lower court judge to comment on the propriety of what the Supreme Court has done in that area. I don’t know that I can say more about that.

Senator EDWARDS. Let me ask you, if I could, Judge, about—we have looked at some of the opinions you have written on the New Mexico Court of Appeals. They are well-reasoned and well-written, I might say, first of all.

Judge HARTZ. Thank you very much.

Senator EDWARDS. You have got a strong body of work, but in some of the opinions that we have seen—some of the opinions were, of course, majority opinions and some were your opinions as dis-

sents. There were six dissents that you listed in constitutional cases. I looked at each of those and in all six of the dissents, if I understood them correctly—this is what I want you to comment on—you seem to argue that the majority of the court made a mistake in finding that the government had violated an individual's constitutional rights. In other words, the majority found there was a violation and you did not believe there was a violation.

Can you comment on that in terms of anyone who might have a concern that that was an indication that you had a view that was out of the mainstream on that particular issue, which is an issue that is obviously one that we think is critically important?

Judge HARTZ. I think someone familiar with my entire body of work would not find me to be at all out of the mainstream, and some of my dissents in areas have been maybe not formally, but in practice adopted in our court. I know I wrote some dissents in speedy trial cases where I thought New Mexico courts had gone beyond what other jurisdictions had done, and my impression has been that the decisions of our courts in recent years have been more in line with the approach I took in my dissents, although I wasn't that far removed from what the majority said.

If you look at the opinions I have written in criminal cases where the supreme court has reversed, I think you will find that in two of those cases my opinion was in favor of the defendant and the supreme court reversed in favor of the government. And of the other two, one was really procedural where my opinion, the opinion I wrote for the court, we said that the issue should be resolved on remand—or not on remand—there should be a hearing on whether the attorney had provided the defendant adequate representation. But—

Senator EDWARDS. In a couple of—excuse me.

Judge HARTZ. I am sorry, sir.

Senator EDWARDS. No. I am sorry. I don't want to interrupt you. I apologize.

Judge HARTZ. I am through.

Senator EDWARDS. Okay. There were a couple of the opinions that did deal with speedy trial, and then there were a couple that appeared to deal with the issue of double jeopardy. One was *New Mexico Taxation and Revenue Department v. Whitener*. Do you remember that case?

Judge HARTZ. Yes.

Senator EDWARDS. And another was the *State v. Gaddy* case, which apparently had to do with habitual offender sentencing enhancement.

Judge HARTZ. Yes.

Senator EDWARDS. Can you just comment on those cases? It appears that in the *New Mexico Taxation and Revenue Department* case the supreme court rejected your view, although only by a five-to-four vote.

Judge HARTZ. Yes. My decision in *Whitener* was wrong. In that case, I was trying to interpret U.S. Supreme Court decisions on double jeopardy in the context of a forfeiture. And the U.S. Supreme Court, when it addressed the issue in the same type of statute as involved in *Whitener*, changed its analysis completely. Its prior analysis was not workable, so I don't feel too bad at having,

I have to admit, goofing in that case because I was trying to figure out what they would rule.

Senator EDWARDS. Hard work sometimes, isn't it?

Judge HARTZ. Yes. In *Gaddy*, I still think I was right in that case.

Senator EDWARDS. And then there were a couple of cases that had to do with—*State v. Vasquez* was one of the cases you listed, which had to do with the court granting a motion to suppress based on the Fourth Amendment.

Judge HARTZ. Yes.

Senator EDWARDS. And you found no violation. Would you like to comment on that? Do you remember the case?

Judge HARTZ. Is that the case involving Border Patrol agents? I am sorry.

Senator EDWARDS. I can't tell from what I have here.

Judge HARTZ. I can see someone nodding, yes. I don't think I differed from the court in whether there was a violation or not. I think the majority agreed that there was no violation of the Federal Constitution. The question was whether the U.S. Border Patrol officers had violated the State Constitution of New Mexico, and if so what remedy there would be.

And my opinion was—and, again, I am afraid I still think I was right—was that the New Mexico constitution did not control the conduct of U.S. Border Patrol agents. The New Mexico constitution did not control the conduct of United States Border Patrol agents at a Border Patrol checkpoint in New Mexico. That is where I differed, and then the question was whether suppression would be appropriate.

Senator EDWARDS. Two other areas I want to ask you about very quickly. We are in the midst in the Congress now of obviously dealing with the events of September 11 and the aftermath, and trying to make sure that the Attorney General has the necessary tools to fight this war on terrorism which we all as Americans feel very strongly about. In fact, we just passed the bill in the United States Senate just before I came over here.

There is little doubt in any of our minds that there will probably be constitutional challenges to some of the provisions of the antiterrorism legislation that we just passed. There has been a fair amount of history in this country where the courts have taken different roles at different times with respect to the protection of civil liberties in the context of war time situations.

Can you just comment on that for me and sort of tell me what your perspective is on that?

Judge HARTZ. My involvement in that issue goes back a long ways because when I was in law school, I was the developments editor of the Harvard Law Review and the president of the Review, and I decided that the developments issue would be on national security and civil liberties. I was the editor of that, so again I did not write material in that developments issue of a couple hundred pages.

Basically, the reason for having that work as a couple hundred pages, as I think I said, was because there hadn't been an overall analysis of the issue in any legal journal, and we felt we could add some perspective to the issue, to a lot of related issues. And a point

made in that developments issue was courts, and the political branches as well, need to be very careful about infringing on civil liberties in the name of national security.

There are very important interests of protecting our Government and our way of life, but we shouldn't jump hastily to remedies that may infringe civil liberties, and I think that approach should guide any judge and any Senator and any Member of Congress in addressing the issue.

Senator EDWARDS. I agree with that.

Let me ask you one last question. Can you identify for me two or three Supreme Court opinions over the years that you have found to be particularly important, well-written, well-reasoned, that you think have made a real impact on the country? What are your favorites? That is really what I am asking.

Judge HARTZ. Well, some of my favorites are not the most important. One of my favorites last term was an eight-to-one decision by Justice Breyer in *Illinois v. McArthur* because it adopted essentially the views in my law review note of 30 years earlier. But I don't think anyone would say that is a very important case.

Senator EDWARDS. It is important to you.

Judge HARTZ. Yes.

The most important cases in my lifetime would be *Brown v. Board of Education*, certainly, for obvious reasons. That has been so important to the Nation. *Mapp v. Ohio*—

Senator EDWARDS. Did you think *Brown* was a well-reasoned opinion?

Judge HARTZ. I have not read *Brown* recently and I have heard some people criticize its rambling, and so on, but sometimes being best-reasoned is not necessarily the best opinion. There were very important political issues there and Chief Justice Warren had to work together, get a unanimous Court and try to explain the importance of this issue to a lot of people in the country who didn't believe that way. So I would not fault it if it were not as tightly reasoned as one would try to make one's own opinions as a judge.

Senator EDWARDS. And you were about to identify another opinion.

Judge HARTZ. One where you certainly couldn't say—I think it is extremely important—well, I mentioned *Mapp v. Ohio*, and that was very important because it increased judicial supervision of the law enforcement community in the States.

And one that I don't think you could say is well-reasoned because there were so many opinions, but the *Pentagon Papers* case was extremely important in establishing the high regard the First Amendment has in our political system.

Those would be the ones I would think would be the most important ones in my lifetime.

Senator EDWARDS. Judge, thank you very much. We appreciate your testimony. I actually got a telephone call about 10 minutes before I walked over here from someone in North Carolina who was a strong supporter of yours.

Judge HARTZ. That is nice to hear.

Senator EDWARDS. You are obviously held in high esteem by a lot of people and I think you will make a terrific member of the bench. So thank you for being here.

Judge HARTZ. Thank you very much.

Senator EDWARDS. Judge Hartz, you are free to go if you would like. You are more than welcome to stay if you would like, too. But we have finished your portion of the hearing, so you are free to go if you would like.

Judge HARTZ. I think will leave, then.

Senator EDWARDS. Absolutely.

Now, if we could have Mr. Bates, Mr. Engelhardt, and Judge Johnson, please.

Mr. Engelhardt, we will start with you. Do you have either an opening statement or members of your family or friends you would like to introduce?

**STATEMENT OF KURT D. ENGELHARDT, NOMINEE TO BE  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

Mr. ENGELHARDT. Thank you, Senator Edwards. I have no opening statement, except to thank the Committee, and in particular Senator Leahy, for allowing me this opportunity to attend the hearing, and to thank you for being here today to Chair the hearing. I also want to thank Senators Breaux and Landrieu for their remarks earlier today, and Congressman Vitter for his kind remarks as well.

My guest is my wife, Ann, who is seated directly behind me.

[The biographical information of Mr. Engelhardt follows.]

**SENATE COMMITTEE QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

1. **Full name (include any former names used.)**  
 Kurt Damian Engelhardt  
 (I have no former names, nicknames, or aliases)
2. **Address: List current place of residence and office address(es).**  
Residence:  
 Metairie, Louisiana  
Business:  
 One Galleria Boulevard, Suite 1400  
 Metairie, Louisiana 70001
3. **Date and place of birth.**  
 April 21, 1960 in New Orleans, Louisiana.
4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**  
 Married.  
Wife:  
 Ann Maureen Wimberly  
Spouse's Occupation:  
 Legal Secretary  
Spouse's Employer:  
**Waller & Associates**  
 Three Lakeway Center  
 Suite 3160  
 3838 N. Causeway Boulevard  
 Metairie, Louisiana 70002

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

8/82 To 5/85	-	Louisiana State University Paul M. Hebert Law Center Baton Rouge, LA 70803
Juris Doctorate	-	May, 1985
1/81 To 5/82	-	Louisiana State University 156 Thomas Boyd Hall (Chancellor) Baton Rouge, LA 70803
Bachelor of Arts, History	-	May, 1982
6/78 To 8/79	-	University of New Orleans Lakefront
6/80 To 12/80	-	New Orleans, LA 70148
(No Degree/Diploma/Other)		

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**Employment:**

Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
May 1992 - Present  
Partner

Little & Metzger  
May 1987 - May 1992  
Commercial Litigation Attorney

Judge Charles Grisbaum, Louisiana Fifth Circuit Court of Appeal,  
Gretna, Louisiana  
July 1985 - July 1987  
Law Clerk

Professor P. Raymond Lamonica  
Paul M. Hebert Law Center  
Louisiana State University Law School  
Baton Rouge, Louisiana  
September, 1984 - May, 1985  
Research Assistant/Clerk

General Cinemas, Inc.  
Cortana Mall  
Baton Rouge, Louisiana  
May, 1984 - August, 1984  
Projectionist

**Board Member Positions:**

Cancer Association of Greater New Orleans (uncompensated)

Heart of the Americas, Inc. (uncompensated)

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None, except three years of high school NJROTC, where I served as company commander in the third and final year of the program.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Mu Sigma Rho Honor Fraternity – Louisiana State University

Loyola University (New Orleans) Institute of Politics – Fellowship

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Judiciary Commission, State of Louisiana  
Chairman, 1998  
Member, 1995 - 1998

Federal Bar Association  
Member, since 1992

Defense Research Institute  
Member, since 1992

American Bar Association  
Member, since 1985

Jefferson Bar Association  
Member, since 1987



Louisiana State Bar Association  
Member, since 1985

New Orleans Bar Association  
Member

Phi Alpha Delta Law Fraternity  
Member, since 1984

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**Organizations that are active in lobbying (State Legislature):**

Legislation In Support Of Animals  
Membership

**All other organizations:**

Cancer Association of Greater New Orleans (CAGNO)  
Member of Board of Directors

Heart of the Americas  
Member of Board of Directors

Louisiana Lawyers for Life  
Membership

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of Louisiana -- All Courts  
October 11, 1985

United States Court of Appeals for the Fifth Circuit  
May 19, 1987

United States District Court and Bankruptcy for the Middle District of Louisiana  
June 2, 1987

United States District Court and Bankruptcy for the Eastern District of Louisiana  
August 26, 1987

United States District Court and Bankruptcy for the Western District of Louisiana  
September 28, 1987

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. Date of last physical examination May 7, 2001.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None, however, Mr. Engelhardt served on the Judiciary Commission of Louisiana, a body of the Louisiana Supreme Court responsible for hearing alleged ethical violations by state judges and making disciplinary recommendations to the Louisiana Supreme Court. See Question #19 below.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Member, Judiciary Commission of Louisiana,  
January, 1995 through December, 1998

Chairman, Judiciary Commission of Louisiana,  
January, 1998 through December, 1998

Service on the nine-member Judiciary Commission of Louisiana is by appointment of the Governor of the State of Louisiana, on recommendation from various judicial bodies in the State of Louisiana. Mr. Engelhardt was nominated by the Conference of Court of Appeal Judges, and served as one of the three lawyer-members on the Commission. The nine-member Commission also consists of three lay persons and three sitting judges. Mr. Engelhardt has never been a candidate for elective public office.

**17. Legal Career:**

**a. Describe chronologically your law practice and experience after graduation from law school including:**

- 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

Yes. Law clerk to Judge Charles Grisbaum, Jr.  
Louisiana Fifth Circuit Court of Appeal  
June, 1985 through August, 1987.

- 2. whether you practiced alone, and if so, the addresses and dates;**

No.

- 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Little, Metzger & Lamz (APLC)  
3421 N. Causeway Boulevard, Suite 700  
Metairie, LA 70002  
Position: Attorney (Employee)  
May, 1987 through May, 1992;

Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
Position: Attorney/Partner  
May, 1992 through the Present.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Commercial litigation, transactional work, corporate consultation, contracts, bankruptcy, casualty and professional malpractice defense work, successions, general civil practice. My practice has generally not changed over the years.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Typical former clients are individuals, small "mom and pop" type corporations and partnerships, and larger companies up to and including major defense contractors such as Avondale Shipyards and Lockheed Martin. I have not received a specialization from the Louisiana State Bar Association in any particular area.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:

- (a) federal courts;

50 per cent

- (b) state courts of record;

50 per cent

- (c) other courts.

None

3. What percentage of your litigation was:

- (a) civil;

95 per cent

(b) criminal.

5 per cent criminal

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Sole Counsel: (Approximately fifteen)

Chief Counsel: (Approximately eight)

Associate Counsel: (Approximately thirty)

5. What percentage of these trials was:

(a) jury;

20 per cent

(b) non-jury.

80 per cent

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I. ***RTC v. Miramon***

22 F.3d 1357 (5th Cir. 1994)

United States District Court, Eastern District of Louisiana, Docket No. 92-2672

United States Fifth Circuit Docket No. 93-3183

**Summary and Disposition:**

Government agency sued officers and directors of failed savings and loan institution. We represented former director, Mr. Albert Bossier, who was voluntarily dismissed by the RTC, with prejudice, early on in these proceedings, as his Motion for Summary Judgment was pending. We subsequently took over the representation of two other defendant directors, Mr. Louis A. Miramon, Jr. and Mr. Larry P. Englande. The suit alleged violation of various underwriting standards on certain loan transactions by the institution. The Fifth Circuit opinion cited hereinabove is the seminal case in the U. S. Fifth Circuit governing standard of care owed by officers/directors of federally-insured financial institutions. After extensive motion practice, the matter settled with mutual dismissal of all claims.

**Parties Represented:**

Albert Bossier  
17 Chateau Palmer  
Kenner, LA 70065

Larry P. Englande

Louis A. Miramon, Jr.

**My Participation:**

My participation included all steps of pretrial procedure, including extensive motion practice, appellate work, depositions, document production, settlement negotiations, and court appearances.

- (a) Date of Representation: 1993 – 1996
  - (b) United States District Court for the Eastern District of Louisiana  
Honorable Charles Schwartz
  - (c) My Co-Counsel: Richard T. Simmons, Jr., Esq.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6516
- Plaintiff's Attorney: Robert J. Burvant, Esq.  
(RTC) King, LeBlanc & Bland, L.L.P.  
201 St. Charles Avenue, Suite 3800  
New Orleans, LA 70170  
(504) 582-3800

Anita M. Warner, Esq.  
Hibernia National Bank  
Post Office Box 61540  
New Orleans, LA 70161  
(504) 533-2168

Robert E. Arceneaux, Esq.  
Barham & Arceneaux  
650 Poydras Street, Suite 2700  
New Orleans, LA 70130-6101  
(504) 525-4400

Matthew K. Brown, Esq.  
Locke, Liddell & Sapp, L.L.P.  
601 Poydras Street, Suite 2400  
New Orleans, LA 70130-6036  
(504) 558-5100

Other  
Counsel  
For Other  
Parties:

Stephen L. Williamson, Esq.  
Steen, McShane & Williamson  
Suite 1250, Energy Centre  
1100 Poydras Street  
New Orleans, LA 70163-1250  
(504) 599-8445  
For Miramon, Wascom & Englande

James T. Flanagan, Esq.  
Mollere, Flanagan & Landry  
2341 Metairie Road  
Metairie, LA 70001  
(504) 837-4950

Harold B. Carter, Jr., Esq.  
4022 Georgetown Drive  
Metairie, LA 70001  
(504) 780-9489  
For Miramon, Wascom & Englande (originally)

George D. Fagan, Esq.  
Leake, Andersson & Mann, L.L.P.  
1100 Poydras Street, Suite 1700  
New Orleans, LA 70163-1701  
(504) 585-7500  
For Cook, Lowry, Fritchie & Oulliber

C. Allen Hennesy, Esq.  
Kean, Miller, Hawthorne, D'Armond, McCowan and  
Jarman, L.L.P.  
1100 Poydras Street, Suite 1470  
New Orleans, LA 70163  
(504) 585-3050  
For Becker

Gus A. Fritchie, III, Esq.  
Irwin, Fritchie, Urquhart & Moore  
400 Poydras Street  
Suite 2700  
New Orleans, LA 70130  
(504) 310-2100

Paul B. Deal, Esq.  
Lemle & Kelleher  
601 Poydras Street  
21st Floor  
New Orleans, LA 70130-6097  
(504) 586-1241  
For James Whittington

John V. Baus, Jr.  
David S. Daly  
Baus, Hammond & Daly  
200 Carondelet Street, Suite 1600  
New Orleans, LA 70130  
(504) 569-0380  
For New England Insurance Company

Mary E. Arceneaux, Esq.  
Post Office Box 44154  
Baton Rouge, LA 70804  
(No Phone Listing)  
For Amicus - La. Bankers Assoc.

II. ***Ex Rel Eric Walle v. Martin Marietta***  
United States District Court, Eastern District of Louisiana, Docket No. 92-03677

**Summary and Disposition:**

Plaintiff brought fraud allegations against government contractor pursuant to qui tam statute / "False Claims" Act. Plaintiff, a former employee, alleged that the contractor submitted false charges for payment to the U. S. government, used defective parts on External Fuel Tank, and billed for unsuccessful research and development. Case tried to jury over two weeks - verdict for defendant.



**Parties Represented:**

Lockheed Martin Michoud Space Systems  
(formerly Martin Marietta Manned Space Systems)  
c/o Mr. Thomas G. Fierke  
General Counsel  
Post Office Box 29304  
New Orleans, LA 70189  
(504) 257-4112

**My Participation:**

I served as co-counsel on this matter and worked on every phase of pretrial and trial of this matter, including extensive investigation of the claims of plaintiff, including interviewing of witnesses; also prepared all motion practice, briefing, attended most depositions, attended all court appearances and pretrial conferences, intimately involved with pretrial preparation and trial strategy, including the pre-testimony handling of witnesses, and prepared post-trial motions regarding assessment of fees and costs against plaintiff.

- (a) Date of Representation: 1993 – 1997
- (b) United States District Court for the Eastern District of Louisiana  
Honorable Henry A. Mentz, Jr.
- (c) My Co-Counsel: Richard T. Simmons, Jr.  
William R. Seay, Jr.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6516

Plaintiff's Attorney: Michael H. Piper, III, Esq.  
721 Old Metairie Drive  
Metairie, LA 70001  
(504) 236-7270

- III. ***Insurance Underwriters Limited, A. L. Schlesinger, Jr., Ronald S. Paulin, Robert J. Richard, Jack Dick and Darryl Pennison v. Oxford Management, Inc. (formerly Latter & Blum, Inc.) and Richard C. Buckman***  
Civil District Court for the Parish of Orleans, State of Louisiana,  
Docket No. 87-13771

**Summary and Disposition:**

This was an action in which I, along with Michael F. Little, represented the plaintiffs against Richard F. Buckman of the Latter and Blum, Inc. operation. Plaintiffs purchased the insurance division of Latter and Blum, Inc. naming it "Insurance Underwriters Limited." Material misrepresentations were made by Mr. Buckman in connection with the purchase of the insurance division, such as stating that the referrals from the real estate division would continue, which was false. After a five-day bench trial, judgment was rendered in favor of the plaintiffs against Mr. Buckman, including a judgment for fraud, and attorney's fees.

**Parties Represented:**

Insurance Underwriters Limited and named plaintiffs  
c/o Edwin O. Schlesinger  
2610 Edenborn Avenue  
Metairie, LA 70002  
(504) 883-2500

**My Participation:**

I served as co-counsel with Mr. Little, working on every phase of the case, including the filing of the original petition, motion practice, all aspects of discovery and document production, retaining, communicating with, and handling expert witnesses. At trial, I handled certain of the witnesses and assisted Mr. Little with all others.

- (a) Date of Representation: 1987 - 1992
- (b) Civil District Court for the Parish of Orleans, State of Louisiana  
Honorable Robin M. Giarrusso
- (c) My Co-Counsel: Michael F. Little  
8 Honeysuckle Lane  
Covington, LA 70433  
(504) 892-7312

Defendants' Attorney: Antonio LeMon  
3445 N. Causeway Boulevard, Suite 724  
Metairie, LA 70002  
(504) 838-8811

Joseph E. Friend  
909 Poydras Street, Suite 1500  
New Orleans, LA 70112  
(504) 584-5454

IV. ***United States v. Dennis Lafont***

United States District Court, Eastern District of Louisiana, Docket No. 93-407

**Summary and Disposition:**

Criminal case arising out of the above-mentioned civil case of *James H. "Jim" Brown, etc. v. Kenneth D. Ross, et al*, USDC - WDLA No. CV-92-1618 "A", involving a conspiracy to defraud certain insurance companies wherein defendant was an officer. A plea bargain was reached.

**Parties Represented:**

Dennis J. Lafont  
5324 Craig Avenue  
Kenner, LA 70065  
(504) 849-2266

**My Participation:**

I participated in most of the interviews given by Mr. Lafont to federal prosecutors, spending extensive time satisfying Mr. Lafont's obligation to cooperate as part of his plea bargain. I also consulted with Mr. Lafont with regard to his ability to satisfy restitution, and communicated with the Assistant U. S. Attorney.

- (a) Date of Representation: 1993 – 2000
- (b) United States District Court, Eastern District of Louisiana  
Honorable G. Thomas Porteous, Jr.
- (c) My Co-Counsel: Richard T. Simmons, Jr.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6516

Plaintiff's Attorney: Harry W. McSherry, Jr.  
(Prosecutor) Assistant United States Attorney  
501 Magazine Street, Room 210  
New Orleans, LA 70130  
(504) 680-3000

V. ***RTC v. Evans***

United States District Court, Eastern District of Louisiana, Docket No. 90-0770  
United States District Court, Eastern District of Louisiana, Docket No. 90-0611  
United States District Court, Eastern District of Louisiana, Docket No. 92-0756  
United States District Court, Eastern District of Louisiana, Docket No. 92-0759

**Summary and Disposition:**

This case involves officer/director liability arising out of failed federally-insured savings and loan institutions. The case involves various aspects of federal statutory and common law, particularly the Financial Institution Reform, Recovery and Enforcement Act (FIRREA); arising out of a failed federally-insured savings and loan institution.

**Parties Represented:**

Robert B. Evans  
137 Midway Drive  
River Ridge, LA 70121  
(504) 737-2705

**My Participation:**

I participated in all aspects of this litigation, including extensive motion practice, settlement negotiations, depositions and other pretrial activity. I also participated in assisting on criminal proceedings brought against defendant Evans.

- (a) Date of Representation: 1992 – 1995
- (b) United States District Court, Eastern District of Louisiana  
Honorable Edith Brown Clement and Honorable Marcel Livaudais, Jr.
- (c) My Co-Counsel: Richard T. Simmons, Jr.  
William R. Seay, Jr.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6500

Plaintiff's Attorney:  
(RTC) David S. Rubin, Esq.  
Kantrow, Spaht, Weaver & Blitzer  
Post Office Box 2997  
Baton Rouge, LA 70821-2997  
(225) 383-4703

Stephen Layne Lee, Esq.  
Hollemand & Lee  
2900 Westfork Drive, Suite 200  
Baton Rouge, LA 70827  
(225) 295-5620

Other  
Counsel  
For Other  
Parties:

Andrew D. Weinstock, Esq.  
Duplass, Zwain & Bourgeois  
3838 N. Causeway Boulevard, Suite 2900  
Metairie, LA 70002  
(504) 832-3700  
For Robert R. Beyer, Jr.

Frank G. DeSalvo, Esq.  
615 Baronne Street, Suite 302  
New Orleans, LA 70113  
(504) 524-4191  
For Ronald C. Brechtel

Venus R. Masakowski, Esq.  
700 Camp Street, 4th Floor  
New Orleans, LA 70130  
(504) 528-9500  
For Ronald C. Brechtel

Sean R. Dawson, Esq.  
Vezina & Gattuso  
Post Office Box 461  
Gretna, LA 70054-0461  
(504) 368-5223  
For John A. Daspit

Jack A. Grant, Esq.  
Grant & Barrow  
Post Office Box 484  
Gretna, LA 70054  
(504) 368-7888  
For Lawrence J. Sisung, Jr.

John V. Baus, Jr.  
David S. Daly  
Baus, Hammond & Daly  
200 Carondelet Street, Suite 1600  
New Orleans, LA 70130  
(504) 569-0380  
For New England Insurance Company

Douglas A. Kewley, Esq.  
Gardner, Kewley & Bisso, A P.L.C.  
1615 Metairie Road, Suite 200  
Metairie, LA 70005  
(504) 832-7222  
For Richard E. Johnston

VI. ***Monumental Life Insurance Company v. R.A.J. Holdings***

United States District Court, Eastern District of Louisiana, Docket No. 99-3281  
C/W

***Admiral Ins. Co. v. R.A. Jakelis & Co., et al***

United States District Court, Eastern District of Louisiana, Docket No. 99-2270  
C/W

***Monumental Life Ins. Co. v. Executive Risk Specialty Insurance Company***

United States District Court, Eastern District of Louisiana, Docket No. 99-2676

**Summary and Disposition:**

This litigation involved allegations of breach of a reinsurance agreement, reinsurance brokers and underwriters agreements, breaches of various fiduciary responsibilities and duties, and extensive insurance coverage issues. The case settled.

**Parties Represented:**

Ronald A. Jakelis,  
R.A.J. Holdings, Inc.  
R.A. Jakelis & Company, Inc.  
International Special Risks, Ltd.  
R.A.J. Properties, Inc.  
4045 DeSoto Street  
Mandeville, LA 70471  
(985) 951-7500

**My Participation:**

I served as lead counsel for defendants. The plaintiff insurance company contended that the defendants were part of a "single business enterprise", and thus should be held liable for debts and obligations of another corporate entity accused of violating its fiduciary and contractual duties. The "single business enterprise" claim was dismissed by the Court on my Motion for Summary Judgment. After days of settlement conferences with the Federal Magistrate, the remainder of the case settled.

- (a) Date of Representation: 1999 – 2000
- (b) United States District Court, Eastern District of Louisiana  
Honorable Charles Schwartz, Jr.; Magistrate Judge Sally Shushan
- (c) My Co-Counsel: Joseph L. Spilman, III, Esq.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6500

James A. Brown, Esq.  
Liskow & Lewis  
One Shell Square  
701 Poydras Street, Suite 5000  
New Orleans, LA 70139-5099  
(504) 581-7979  
(As To Coverage)

Plaintiff's Attorney: Peter T. Maloney, Esq.  
Vincent Vitkowsky, Esq.  
Edwards & Angell, L.L.P.  
750 Lexington Avenue  
New York, NY 10022

Thomas A. Casey, Jr., Esq.  
Covert J. Geary, Esq.  
Jones, Walker, Waechter, Poitevent, Carrere &  
Denegre, L.L.P.  
201 St. Charles Avenue  
New Orleans, LA 70170-5100  
(504) 582-8000

Other  
Counsel  
For Other  
Parties: Daniel T. Plunkett, Esq.  
McGlinchey Stafford, A P.L.L.C.  
Post Office Box 60643  
New Orleans, LA 70160-0643  
(504) 586-1200  
For Syndicated Underwriters, Inc.

John P. Guillory, Esq.  
Leonard & Leonard, A P.L.C.  
Post Office Box 91823  
Lafayette, LA 70509-1823  
(337) 233-4424  
For Admiral Insurance Company

Leslie S. Ahari, Esq.  
Ross, Dixon, & Bell, L.L.P.  
601 Pennsylvania Avenue, N.W.  
North Building  
Washington, DC 20004-2688  
(202) 662-2036  
For Executive Risk

VII. *Pan- American Life Insurance Company v. Ronald Jakelis, et al*  
Civil District Court for the Parish of Orleans, State of Louisiana  
Docket No. 99-7783

**Summary and Disposition:**

This litigation involved allegations of breach of a reinsurance agreement, reinsurance brokers and underwriters agreements, breaches of various fiduciary responsibilities and duties, and extensive insurance coverage issues. The case is still pending.

**Parties Represented:**

Ronald A. Jakelis,  
R.A.J. Holdings, Inc.  
R.A. Jakelis & Company, Inc.  
International Special Risks, Ltd.  
R.A.J. Properties, Inc.  
4045 DeSoto Street  
Mandeville, LA 70471  
(985) 951-7500

**My Participation:**

I served and still serve as lead counsel for defendants. The plaintiff insurance company contends that the defendants are part of a "single business enterprise", and thus should be held liable for debts and obligations of another corporate entity accused of violating its fiduciary and contractual duties.

- (a) Date of Representation: 1999 – Present
- (b) Civil District Court, Parish of Orleans, State of Louisiana  
Honorable Carolyn W. Gill-Jefferson
- (c) My Co-Counsel: Joseph L. Spilman, III, Esq.  
Hailey, McNamara, Hall, Larmann & Papaie, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6500

Michael H. Ellis, Esq.  
Chehardy, Sherman, Ellis, Breslin & Murray  
One Galleria Boulevard, Suite 1100  
Metairie, LA 70001  
(504) 833-5600  
(Represents Parties I Represent But On Counterclaim)



Plaintiff's Attorney: Darryl J. Foster, Esq.  
William R. Forrester, Jr., Esq.  
Lemle & Kelleher  
601 Poydras Street, 21st Floor  
New Orleans, LA 70130-6097  
(504) 586-1241

Other Daniel T. Plunkett, Esq.  
Counsel McGlinchey Stafford, A P.L.L.C.  
For Other Post Office Box 60643  
Parties: New Orleans, LA 70160-0643  
(504) 586-1200  
For Syndicated Underwriters, Inc.

John P. Guillory, Esq.  
Leonard & Leonard, A P.L.C.  
Post Office Box 91823  
Lafayette, LA 70509-1823  
(337) 233-4424  
For Admiral Insurance Company

Leslie S. Ahari, Esq.  
Ross, Dixon, & Bell, L.L.P.  
601 Pennsylvania Avenue, N.W.  
North Building  
Washington, DC 20004-2688  
(202) 662-2036  
For Executive Risk

Rhea Woods, Esq.  
234 Loyola Avenue, Suite 722  
New Orleans, LA 70112  
(504) 525-2636  
For

VIII. **Parnell N. Avery, M.D., et al v. Eric Schmidt, et al**  
United States District Court, Eastern District of Louisiana, Docket No. 93-4079

**Summary and Disposition:**

Civil RICO case wherein our defendant was dismissed pursuant to the McCarran-Ferguson Act.

**Parties Represented:**

Michael H. O'Keefe, Sr. (Defendant)

My Participation:

I was involved in investigation of this claim, extensive research of the law, communicating with opposing counsel, preparing and filing the Motion to Dismiss based on an unsettled area of law (in the Fifth Circuit), and attended all Court functions and hearings leading up to dismissal.

- (a) Date of Representation: 1993 - 1995
- (b) United States District Court, Eastern District of Louisiana  
Honorable Patrick E. Carr
- (c) My Co-Counsel: Richard T. Simmons, Jr.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6516

Plaintiff's Attorney: Peter D. Derbes, Esq.  
3914 Canal Street  
New Orleans, LA 70119  
(504) 486-5006

Other Counsel For Other Parties: V. Thomas Clark, Jr., Esq.  
Crawford & Lewis  
1600 Premier Centre - North Tower  
450 Laurel Street  
Baton Rouge, LA 70801  
(225) 343-5290  
For Associated Insurance Consultants, Inc.,  
through the Commissioner of Insurance,  
James H. "Jim" Brown, of the State of Louisiana,  
in his capacity as liquidator; Physicians Medical  
Indemnity Association, Inc., etc.

Robert B. Bieck, Jr., Esq.  
Virginia W. Gundlach, Esq.  
Jones, Walker, Waechter, Poitevent, Carrere  
& Denegre  
201 St. Charles Avenue  
New Orleans, LA 70170-5100  
(504) 582-8000  
For Johnny C. Moore

- IX. ***Al J. Philips v. August J. Berner, et al***  
Civil District Court for the Parish of Orleans, State of Louisiana  
Docket No. 97-11980  
Fourth Circuit Court of Appeal Docket No. 2000-CA-0103

**Summary and Disposition:**

This was a jury trial in which I represented the plaintiff, Mr. Philips, with regard to a breached oral sale agreement and material misrepresentations which culminated in the termination of his employment by his employer, Berner's Heating & Air Conditioning. (The case is significant because the oral sale agreement was held valid and enforceable by the jury.) The case was tried before a jury over four and a half days, and verdict was rendered in favor of Mr. Philips. The defendants appealed to the Louisiana Fourth Circuit Court of Appeal, which reversed the judgment. At this time, the matter has been appealed by the plaintiff to the Louisiana Supreme Court.

**Parties Represented:**

Al J. Philips, Jr.  
501 French Street  
New Orleans, LA 70124  
(504) 722-2391

**My Participation:**

I handled all aspects of the litigation, including the filing of suit, motion practice, all aspects of discovery, conferences with the Court, pretrial preparation, and all presentation before the jury. At trial, I was assisted by associate Lynette Hall-Lewis of my firm, who handled a few witnesses.

- (a) Date of Representation: 1997 – Present
- (b) Civil District Court, Parish of Orleans, State of Louisiana  
Honorable Carolyn W. Gill-Jefferson
- (c) My Co-Counsel: Lynette Hall-Lewis, Esq.  
(formerly of - Hailey, McNamara, Hall, Larmann  
& Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6500

Opposing Attorney: Richard K. Leefe, Esq.  
George L. Gibbs, Esq.  
Leefe, Gibbs & Koehler  
3900 N. Causeway Boulevard, Suite 1470  
Metairie, LA 70002  
(504) 830-3939

- X. ***Marie Giordano v. Martha Sassone, et al***  
24th Judicial District Court for the Parish of Jefferson, State of Louisiana,  
Docket No. 419-002

**Summary and Disposition:**

This is a legal malpractice action brought by a former client of the defendant attorney, claiming that the defendant attorney committed malpractice in making a claim to mineral royalties in Plaquemines Parish. A class of other claimants intervened in the malpractice action, aligning themselves with the original plaintiff, alleging malpractice. After the class action was litigated and the intervention dismissed by court order, the original case settled.

**Parties Represented:**

Martha Sassone  
581 Smith Drive  
Metairie, LA 70005  
(504) 364-3922

**My Participation:**

I served as co-counsel with Richard T. Simmons, Jr. of the Hailey, McNamara firm. In that capacity, I scheduled and took depositions, participated in all hearings by making presentations at oral argument, and handled certain witnesses at the class action hearing. In addition, I drafted numerous pleadings and other briefs filed with the court. I also participated in all aspects of settlement, and handling of the client.

- (a) Date of Representation: 1991 – 1999
- (b) 24th Judicial District Court, Parish of Jefferson, State of Louisiana  
Honorable Brady Fitzsimmons (Sitting Ad Hoc)
- (c) My Co-Counsel: Richard T. Simmons, Jr.  
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.  
One Galleria Boulevard, Suite 1400  
Metairie, LA 70001  
(504) 836-6500

Plaintiff's Attorney: William F. Wessel  
Charlotte A. Lagarde  
Wessel & Associates  
127 Camp Street  
New Orleans, LA 70130  
(504) 568-1112

Other  
Counsel  
For Other  
Parties: Daniel A. Rees  
Rees & Rees  
Post Office Box 53286  
Lafayette, LA 70505-3286  
(337) 507-3455  
For The Home Insurance Company

John V. Baus, Jr.  
Baus, Hammond & Daly  
200 Carondelet Street, Suite 1600  
New Orleans, LA 70130  
(504) 569-0380  
For New England Insurance Company

[Nelson L. Burchfield (Died During Case)]  
Representation assumed by:  
Melvin J. Burmaster, Jr.  
8075 Highway 39  
Braithwaite, LA 70040-2225  
For Intervenor, Farrett J. Romagosa, Sr.  
and Merrill S. Cantin, Sr.

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In addition, I consider significant my work on transactional matters such as the sale of successful businesses to larger purchasers, including the sale of Pharmaceutical Dose Service La., Inc. of Jefferson, Louisiana to Integrated Health Services, Inc. Transactions such as this usually involve some type of stock transfer, in addition to the negotiation of a continuing consultant's relationship by the seller, with a non-competition/non-solicitation provision. Those matters, though exhaustive and detailed work, are often the most rewarding in terms of result.

In addition, cases that make precedential authority are also significant. See RTC v. Miramon, USDC - EDLA No. 92-2672, Section "A" (Judge Charles Schwartz, Jr.), listed in Question #18 above. See also Parnell N. Avery, M.D., et al v. Eric Schmidt, et al, USDC - EDLA No. 93-4079, Section "J" (Judge Patrick E. Carr), listed in Question #18 above, which involved interpretation of the McCarron Ferguson Act in the context of a civil RICO case. In that matter, I served as co-counsel for the defendants and successfully prepared and argued the Motion to Dismiss those proceedings in an area of the law on which the United States Fifth Circuit had not yet clearly ruled.

I consider the Judiciary Commission work over my four-year tenure to be extremely significant, not only on those matters on which I served as Chair, but on all other matters presented before the Judiciary Commission on the prior three years of my service. My role as a Commission member included handling matters pretrial, and hearing all

evidence at such hearings/trials in order to determine whether a breach of the Canon of Judicial Ethics occurred. From that vantage point, I gained an appreciation of the role of a judge, and also became intimately familiar with the Code of Judicial Ethics, and issues which arise thereunder.

Cases presided over by Kurt Engelhardt as Chairman of the Louisiana Judiciary Commission:

Each of these cases involves allegations of judicial misconduct and breaches of the Canons of Judicial Ethics. I served as Chairman of the Judiciary Commission for these hearings, and conducted these hearings/trials by communicating with the attorneys pretrial, working with the attorneys to put on their respective cases, ruling on evidence and directing the order of trial, and ultimately submitting the Commission's recommendation to the Louisiana Supreme Court.

1) ***In re Bowers***, No. 98-1735 (La. 12/1/98); 721 So.2d 875

Formal charges brought regarding judicial demeanor on the bench, i.e. treatment of attorneys and litigants.

Special Counsel: Steven Scheckman  
(Prosecution): Office of Special Counsel  
The Judiciary Commission of Louisiana  
601 St. Charles Avenue  
New Orleans, Louisiana 70130  
(504) 568-8299

Defense Counsel: Herschel E. Richard, Jr., Esq.  
Cook, Yancey, King & Galloway, A P.L.C.  
Post Office Box 22260  
Shreveport, LA 71120-2260  
(318) 221-6277

Commission Legal Counsel: Nancy E. Rix  
The Judiciary Commission of Louisiana  
301 Loyola Avenue  
Room 109  
New Orleans, LA 70112-1887  
(504) 568-5747

2) ***In re Harris***, No. 98-0570 (La. 7/8/98); 713 So.2d 1138

Formal charges brought regarding female judge's relationship with known criminal.

Special Counsel: Steven Scheckman  
 (Prosecution): Office of Special Counsel  
 The Judiciary Commission of Louisiana  
 601 St. Charles Avenue  
 New Orleans, Louisiana 70130  
 (504) 568-8299

Defense Counsel: Joseph Jerry McKernan, Esq.  
 McKernan Law Firm  
 8710 Jefferson Highway  
 Baton Rouge, LA 70809  
 (225) 926-1234

Commission Legal Counsel: Nancy E. Rix  
 The Judiciary Commission of Louisiana  
 301 Loyola Avenue  
 Room 109  
 New Orleans, LA 70112-1887  
 (504) 568-5747

3) ***In re Paul Wimbish***, No. 98-2882 (La. 4/13/99); 733 So.2d 1183

Formal charges brought regarding delinquent performance of judicial duties, including holding "cases under advisement" for extended periods of time, i.e. docket management.

Special Counsel: Steven Scheckman  
 (Prosecution): Office of Special Counsel  
 The Judiciary Commission of Louisiana  
 601 St. Charles Avenue  
 New Orleans, Louisiana 70130  
 (504) 568-8299

Defense Counsel: Charles J. Hanemann, Jr. (retired)  
 (formerly - Henderson, Hanemann & Morris)  
 (now - Henderson, Reilly & Boudreaux,  
 A P.L.C.)  
 300 Lafayette Street  
 Houma, LA 70360  
 (504) 868-2081

Commission Legal Counsel: Nancy E. Rix  
 The Judiciary Commission of Louisiana  
 301 Loyola Avenue  
 Room 109  
 New Orleans, LA 70112-1887  
 (504) 568-5747

- 4) *In re Emanuel*, No. 98-3142 (La. 4/13/99); 731 So.2d 229;  
reh'g granted as to costs, otherwise denied (La. 8/23/99)

Formal charges brought against judge who refused  
to hold status conferences and was unresponsive  
to attorneys seeking to advance their cases.

Special Counsel: Steven Scheckman  
(Prosecution): Office of Special Counsel  
The Judiciary Commission of Louisiana  
601 St. Charles Avenue  
New Orleans, Louisiana 70130  
(504) 568-8299

Defense Counsel: Donald G. Kelly, Esq.  
T. Taylor Townsend, Esq.  
Kelly, Townsend & Thomas  
Post Office Box 756  
Natchitoches, LA 71457  
(318) 352-2353

Commission Legal Counsel: Nancy E. Rix  
The Judiciary Commission of Louisiana  
301 Loyola Avenue  
Room 109  
New Orleans, LA 70112-1887  
(504) 568-5747

- 5) *In re Thibodeaux*, No. 99-0014 (La. 7/7/99); 737 So.2d 1284

Formal charges brought against judge holding  
event at gambling casino, allegedly receiving  
complimentary goods and services.

Special Counsel: Steven Scheckman  
(Prosecution): Office of Special Counsel  
The Judiciary Commission of Louisiana  
601 St. Charles Avenue  
New Orleans, Louisiana 70130  
(504) 568-8299

Defense Counsel: James P. Lambert, Esq.  
Curtis & Lambert, A P.L.C.  
Post Office Box 80247  
Lafayette, LA 70598-0247  
(337) 235-1825



Commission Nancy E. Rix  
 Legal Counsel: The Judiciary Commission of Louisiana  
 301 Loyola Avenue  
 Room 109  
 New Orleans, LA 70112-1887  
 (504) 568-5747

- 6) *In re Jefferson*, No. 99-1313 (La. 1/19/2000); 753 So.2d 181;  
 reh'g denied (La. 2/18/2000); \_\_\_\_ So.2d \_\_\_\_/

Formal charges brought against judge for erratic  
 behavior on the bench, abuse of contempt powers,  
 and actions contrary to administration of justice.

Special Counsel: Steven Scheckman  
 (Prosecution): Office of Special Counsel  
 The Judiciary Commission of Louisiana  
 601 St. Charles Avenue  
 New Orleans, Louisiana 70130  
 (504) 568-8299

Defense Counsel: Daryl Blue, Esq.  
 Post Office Box 3105  
 Monroe, LA 71210  
 (318) 388-0883

Commission Nancy E. Rix  
 Legal Counsel: The Judiciary Commission of Louisiana  
 301 Loyola Avenue  
 Room 109  
 New Orleans, LA 70112-1887  
 (504) 568-5747

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None beyond current partner status with Hailey, McNamara, Hall, Larmann & Papale, L.L.P. However, I am not an equity partner in the firm, and my departure from the firm would not require a "buy-out" or any other remuneration. My "partnership" status with the firm exists for the calculation of monthly compensation only. In addition, the firm has set up a 401k plan and pension, which can be converted upon my departure into an individual retirement account having no connection with the firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

The judge has a duty to handle any and all cases allotted to him/her by the random allotment process. Nonetheless, I believe in complete disclosure to the litigants of any matter, interest, or other factor which might in any way objectively question the impartiality and/or fairness of the judge. The procedure which I will follow will involve early disclosure by the litigants of key witnesses so that such a determination and disclosure can be made.

I know of no categories of litigation, and have no financial arrangements, that are likely to present potential conflicts of interest during my initial service. I do believe that I should recuse myself in cases involving Hailey, McNamara, Hall, Larmann & Papale, L.L.P. attorneys would be warranted for a period of time (perhaps seven years) from the date of departure from Hailey, McNamara, Hall, Larmann & Papale, L.L.P. After that period, disclosure of former association would be required. I am not and have never been an equity partner in the law firm, but have been a partner solely for determination of compensation. I have also never been a part of management of the Hailey, McNamara law firm, nor are any of my relatives employed there. Upon departure, I will have no financial interest or any other relationship with the firm.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report required by Ethics in Government Act of 1978, submitted herewith.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Aside from volunteer grass roots work in a variety of campaigns, I respectfully submit the following:

Treasurer, David Vitter for Congress (Louisiana House District 1)

January 1999 - Present

- Responsible for deposits, accounts payable, and FEC reporting.

Chairman, Committee to Elect David Vitter (Louisiana Legislature)

1991 - Present

- Responsible for accounts payable and Louisiana Ethics Commission reporting.

Treasurer, The Louisiana Term Limits Campaign

(Successfully supporting passage of Louisiana  
Constitutional Amendment for term limits for state legislators)  
1995

- Responsible for Louisiana Ethics Commission reporting.

There have been no complaints lodged with the Federal Election Commission, or state or local election authorities, in connection with any of these.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	\$40,000	-	-	Notes payable to banks—secured	None	-	-
U.S. Government securities—add schedule	None	-	-	Notes payable to banks—unsecured	None	-	-
Listed securities—add schedule	None	-	-	Notes payable to relatives	None	-	-
Unlisted securities—add schedule	None	-	-	Notes payable to others	None	-	-
Accounts and notes receivable:	None	-	-	Accounts and bills due			
Due from relatives and friends	None	-	-	Unpaid income tax	None	-	-
Due from others	None	-	-	Other unpaid tax and interest	None	-	-
Doubtful	None	-	-	Real estate mortgages payable—add schedule	\$277,000.00	-	-
Real estate owned—add schedule	\$428,000.00	-	-	Chattel mortgages and other liens payable	-	-	-
Real estate mortgages receivable	None	-	-	Other debts—itemize:			
Autos and other personal property	\$50,000	-	-	Monthly Expenses	\$500.00/mo.		
Cash value—life insurance	\$ 5,900			(utilities, etc.)			
Other assets—itemize:							
N.Y. Life Annuity	\$15,243	-	-				
MFS Investment Mgmt Mutual Fund	\$40,270	-	-				
Minnesota Mutual IRA	\$10,371	-	-	Total liabilities	\$277,500.00		
				Net Worth	\$309,284.00		
Total Assets	\$586,784.00			Total liabilities and net worth	\$664,284.00		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor	None	-	-	Are any assets pledged? (Add schedule.)	No	-	-
On leases or contracts	None	-	-	Are you defendant in any suits or legal actions?	No	-	-
Legal Claims	None	-	-	Have you ever taken bankruptcy?	No	-	-
Provision for Federal Income Tax							
Other special debt	None	-	-				

**REAL ESTATE MORTGAGES SCHEDULE**

**First Mortgage:**

Chase Manhattan Mortgage Corporation  
3415 Vision Drive  
Columbus, OH 43219  
Phone: (800) 848-9136

Secured By: (My Residence)  
Metairie, LA

**Second Mortgage:**

Bank One, Louisiana, N.A.  
3420 Severn Avenue  
Metairie, LA 70002  
Phone: (504) 456-3355

Secured By: (My Residence)  
Metairie, LA

FD-278  
Rev. 1/2000

# FINANCIAL DISCLOSURE REPORT Nomination Report

Report required by 18 U.S.C. § 479, as amended  
18 U.S.C. App. 4, Sec. 101-112

1. Person Reporting (Last name, first, middle initial) Engelhardt, Rust D.	2. Court or Organization USDC - ECLA	3. Date of Report 08/06/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Noninee	5. Report Type (check type) X Nomination Date 08/02/2001 Initial _____ Annual _____ Final _____	6. Reporting Period 71/01/2000 to 08/03/2001
7. Chambers or Office Address One Galleria Boulevard Suite 1400 Metairie, LA 70001	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

## I. POSITIONS (Reporting individual only; see pp. 9-13 of instructions.)

POSITION (No reportable positions.)	NAME OF ORGANIZATION / ENTITY
1 Trustee	Trust No. 1 (Niece - Beneficiary)
2 Member - Board of Directors	Cancer Association of Greater New Orleans (CAGNO)
3 Partner	Hailey, McNamara, Hall, Larmann & Papale, L.L.P.

## II. AGREEMENTS (Reporting individual only; see pp. 14-16 of instructions.)

DATE	PARTIES AND TERMS
1 99-Present	Hailey, McNamara, Hall, Larmann & Papale, L.L.P. Retirement Plan (No Control) (See Sec. VII - MFS Investment Management)
2	
3	

## III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1 1999	Hailey, McNamara, Hall, Larmann & Papale, L.L.P.	\$108,000.00
2 2000	Hailey, McNamara, Hall, Larmann & Papale, L.L.P.	\$143,000.00
3 2001	Hailey, McNamara, Hall, Larmann & Papale, L.L.P.	\$57,700.00
4 99-2001	Waller & Associates	

FINANCIAL DISCLOSURE REPORT Form FD-278 (Rev. 10-1-95) Page 2 of 2 Due 08/06/2001

**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 23-28 of instructions.)

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

(Includes those to spouse and dependent children. See pp. 29-32 of instructions.)

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

**VI. LIABILITIES**

(Includes those to spouse and dependent children. See pp. 33-35 of instructions.)

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CO
1	<input checked="" type="checkbox"/> NONE		
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more



FINANCIAL DISCLOSURE REPORT		Engelhardt, First 2		Date of Report			
VII. Page 1 INVESTMENTS and TRUSTS - income, value, transactions		(Includes those of spouse and dependent children. See pp. 15-14 of instructions.)		08/06/2001			
A	B	C	D				
Description of Assets (including trust assets)	Income during reporting period	Gross value at end of reporting period	Transactions during reporting period				
	(1) Amount (2) Type (A-H) Dividend, rent or interest	(1) Value (2) Value (A-H) Code (I-P) Code (Q-W) Sale, merger, redemption	(1) Type (2) Method (e.g. buy, sell, partial sale, merger, redemption)	if not exempt from disclosure			
Place "N/A" after each asset exempt from prior disclosure.				(2) Date Month- Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) "derivative" buyer/seller (if private transactions)
NONE (No reportable income, assets, or transactions.)							
1 Minnesota Life Annuity - Index 500	A Interest	J T	EXEMPT				
2 NFS Investment Management (Common Investment Fund)							
3 - Massachusetts Investors Trust - A	B Dividend	K T	EXEMPT				
4 - NFS Total Return Fund - A	A Dividend	J T	EXEMPT				
5 - NFS Capital Opportunities Fund - A	A Dividend	J T	EXEMPT				
6 - NFS Gov't Securities Fund - A	A Dividend	J T	EXEMPT				
7 - NFS Strategic Growth Fund - A	B Dividend	J T	EXEMPT				
8 N.Y. Life Annuity	B Interest	J T	EXEMPT				
9 Trust No. 1 (Niece)	A Dividend	K T	EXEMPT				
10 - Fidelity Growth & Income (FGRGX)							
11 - Fidelity Blue Chip Growth (FBGRX)							
12							
13							
14							
15							
16							
17							

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Engelhardt, Russ D.	Date of Report 08/06/2001
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**  
*(Indicate part of report.)*

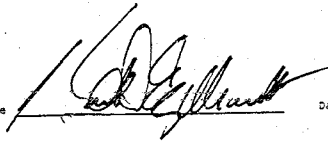
NAME OF PERSON REPORTING: Engelhardt, R. J. D. DATE OF REPORT: 08/06/2001

## IX. CERTIFICATION

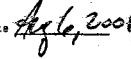
I certify that all the information given above, including information pertaining to my spouse and minor or dependent children, if any, is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because of not applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference Regulations.

Signature



Date



Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Initially, I reiterate that I am an uncompensated board member of the Cancer Association of Greater New Orleans (CAGNO). This group not only assists and promotes research, but, perhaps more importantly, provides prosthetic devices, prescription drugs, and other comforts to patients suffering from cancer. The group also stages "Camp Challenge", a summer camp for terminally-ill young cancer patients. I also serve on the Investment Committee of the Board of Directors, and have contributed significant amounts of time in this endeavor, including occasional legal services.

I have been involved in working with the parents of disabled children to air certain issues with the Jefferson Parish School Board arising out of the Americans With Disabilities Act. Although there has been and is no litigation surrounding these claims, I engaged in correspondence on behalf of parents, and set up and attended various meetings with the local public school board administrators and the school board's attorney to resolve issues surrounding the education of children with disabilities.

In addition, my law firm, Hailey, McNamara, Hall, Larmann & Papale, L.L.P., has been actively involved with the local pro bono project in the New Orleans area for several years. The law firm retains records for such activity.

I have also donated my services to the elderly and poor persons with regard to proper care and treatment of their animals, and other animals near them. This includes resolving problems with local governing authorities regarding animal ownership, as well as attempts by such persons to rescue and/or care for abandoned animals on or near their residences.

Finally, I have made numerous financial contributions to various charities including those benefiting the hearing-impaired (my niece is a deaf student at the Louisiana School for the Deaf), groups fighting animal cruelty and participating in animal rescue, and Alzheimer's Disease.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I am not now, and have never been, a member of any organization that discriminates on the basis of race, sex or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no such selection commission in this jurisdiction. My initial involvement in the judicial selection process was a conversation with Congressman David Vitter, for whom I serve as campaign treasurer. After numerous discussions with him and others involved in not only the political process but also the governing process, I scheduled meetings with members of the Louisiana Congressional delegation through Congressman Vitter. In January and February, 2001, I twice visited Washington, D.C. to meet with each congressional member, including Louisiana's two senators, John Breaux and Mary Landrieu, on an individual basis. It is my understanding that the congressional delegation, after conferring with Governor Mike Foster and various other public officials in Louisiana, determined that my nomination was desirable, and the President was contacted via written correspondence suggesting my nomination.

In April, 2001, I was invited to an interview by the Office of White House Counsel, which I attended. A few weeks later, I was advised by the White House Counsel's Office that I would be receiving a packet of documents to be completed by me, wherein I provided a variety of information regarding my legal experience, personal background, financial data, and medical information. Thereafter, I was contacted by an agent in the New Orleans Office of the Federal Bureau of Investigation, indicating that a background check was being commenced, and requesting a personal interview. After the interview, it is my understanding that various agents of the FBI contacted numerous individuals regarding my personal and legal background.

Thereafter, I was advised by the Office of White House Counsel that my nomination would be forthcoming.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Article III courts are courts of limited jurisdiction, i.e., their jurisdiction is conferred by the Constitution and by specific Federal statutory authority. Federal judges should not seek to expand Federal jurisdiction beyond cases in controversy, i.e., legitimate disputes between litigants. To do so violates the separation of powers clause of the United States Constitution, and does not afford the deference set forth in the Constitution for the other branches of the Government. The imposition of broad affirmative duties on the other two branches of the Government, and indeed on society in general, is not the province of the Federal judiciary, but rather is a legislative function.

The role of the Federal judiciary is to apply the law, as written by the legislative bodies, to the facts as proven by the litigants. I do not believe that interpreting statutory authority beyond its common meaning as written by the Legislature is appropriate or warranted. If the statute is clear on its face, it should be applied as such, and not beyond that meaning. If any lack of clarity exists on the face of the statute, the legislative history is a tool to be used to discern the parameters of the legislative debate, and thus the intention of the Congress in enacting such statute.

In conclusion, with regard to the specific "characteristics" set forth in this question, the Federal judiciary has no role in imposing broad, affirmative duties upon governments and society beyond the application of statutory authority to the particular case presented; and should consider standing and ripeness prior to proclaiming the application of law to any set of facts; and should give deference to the legislative and executive branches consistent with separation of powers principles.

AFFIDAVIT

I, KURT D. ENGELHARDT, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 13, 2001

  
KURT D. ENGELHARDT

  
NOTARY PUBLIC



With that, I will defer to the next nominee.

Senator EDWARDS. Well, thank you, and we welcome Ann. We welcome you to Washington and to this hearing.

Mr. Bates?

**STATEMENT OF JOHN D. BATES, NOMINEE TO BE DISTRICT  
JUDGE FOR THE DISTRICT OF COLUMBIA**

Mr. BATES. I have no opening statement, Mr. Chairman. I would like to thank the Committee and you for having us here today, affording us this opportunity especially in these extraordinary times, and thank Chairman Leahy as well for the work that he is doing.

I have a few introductions, if I might—

Senator EDWARDS. Please.

Mr. BATES. —in addition to thanking, of course, Congresswoman Morella and Congresswoman Norton for their kind introductions today.

My wife, Carol, is with me, as well as my three children, who were introduced earlier.

Senator EDWARDS. Why don't they stand?

Mr. BATES. In reverse chronological order: Kelly, a freshman at Walt Whitman High School.

Senator EDWARDS. Now, you are going to have to tell us who is who. This is Kelly. Your wife is telling us.

Mr. BATES. My son, Brian, who is a senior at Walt Whitman High School, and my daughter, Lauren, who flew down from New Hampshire where she is a junior at Dartmouth. I am most proud of all of them and happy to have them with me today.

Senator EDWARDS. Welcome. We are happy to have you all here.

Mr. BATES. I also have a few other family members. My brother, Richard D. Bates, Jr., is here. He is a professor of chemistry at Georgetown University, and his two children, my nephew, Spencer, who is a senior at Northwestern University, and my niece, Dunlea, who is a junior at Bethesda–Chevy Chase High School.

Senator EDWARDS. Are they all here?

Mr. BATES. They are here.

Senator EDWARDS. Would you all please stand? Come on, you can stand. Welcome. We are glad to have you here, too.

Mr. BATES. I have a number of friends here from my law firm, as well as Neille Russell, who will be working with me, I hope, if the Senate sees fit to confirm me. And I am very happy to have them here as well.

Senator EDWARDS. Thank you, Mr. Bates, very much.

[The biographical information of Mr. Bates follows.]



United States Senate  
Questionnaire for Judicial Nominees

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
**John Deacon Bates**
2. Address: List current place of residence and office address(es).  
  
Residence: Bethesda, MD  
Office: Miller & Chevalier, Chartered, Suite 900, 655  
Fifteenth Street, N.W., Washington, D.C. 20005
3. Date and place of birth.  
  
October 11, 1946, in Elizabeth, NJ
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married to Carol Ann Rhees (attorney, currently on sabbatical from Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036).
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Wesleyan University, 1964-1968, B.A. 1968  
Drew University, 1966  
University of Maryland School of Law, 1973-1976, J.D. 1976
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
United States Army - 1968-1971 (First Lieutenant)  
Legal Aid Service, Baltimore, MD - Summer 1974 (law clerk)  
Frank, Bernstein, Conaway & Goldman, Baltimore, MD - Summer 1975 (law clerk)

Law Clerk to Judge Roszel C. Thomsen, United States District Court for the District of Maryland, Baltimore, MD - 1976-1977 (law clerk)  
 Steptoe & Johnson, Washington, D.C. - 1977-1980 (associate)  
 Office of the United States Attorney, District of Columbia, United States Department of Justice - 1980-1997  
 (Assistant United States Attorney)  
 Office of the Independent Counsel (Whitewater) - 1995-1997  
 (Deputy Independent Counsel)  
 Miller & Chevalier, Chartered, Washington, D.C. - 1998-present (member)  
 Washington Lawyers' Committee for Civil Rights and Urban Affairs - 1999-present (member, Board of Directors)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes. United States Army, 1968-1971 (service no. [REDACTED]) - [REDACTED] - First Lieutenant; Vietnam service; Bronze Star and other awards; honorable discharge in June 1971.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Recipient of Director's Award for Superior Performance (1983) and Special Commendation Award (1986) for service as Assistant United States Attorney.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

District of Columbia Bar: Treasurer, 1992-1993;  
 Publications Committee, 1991-1997 (Chair, 1994-1997);  
 Member, Task Force on Civility in the Profession, 1994-1996; Examination of Rule 49 Committee, 1995-1996;  
 Special Committee on Government Lawyers, 1990-1991.  
 Federal Bar Association: Chair, Litigation Section, 1986-1987.  
 District of Columbia Circuit Advisory Committee on Procedures, 1989-1993.

United States District Court for the District of Columbia,  
Civil Justice Reform Committee, 1996-present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Washington Lawyers' Committee for Civil Rights and Urban Affairs, 1999-present (member, Board of Directors) (insignificant lobbying).

No other organizations.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

District of Columbia, 1976-present

Maryland, 1976-present (inactive from approximately 1981-1997 because practicing with United States government in District of Columbia)

United States District Court for the District of Columbia, 1977-present

United States District Court for the District of Maryland, 1976-present

United States Court of Appeals for the District of Columbia Circuit, 1977-present

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Federal Equitable Restraint: A Younger Analysis in New Settings," 35 Maryland L. Rev. 483 (1976)

"The Perils of Parallel Criminal and Civil Proceedings: A Primer," The Health Lawyer, Vol. 10, No. 4 (March 1998) (ABA Health Law Section)

Materials from representative speeches are attached. These speeches have been at the BlueCross BlueShield Association Lawyers' Conference (1999, 2000), the BlueCross Blue Shield Association Compliance and Ethics Conference (1999), the American Health Lawyers Association Health Care Fraud and Abuse Conference (2000), and the Michigan Association of Health Plans Conference (1999).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. April 18, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Assistant United States Attorney, District of Columbia (appointed) - 1980-1997 (Chief, Civil Division, 1987-1997).

Deputy Independent Counsel, Office of the Independent Counsel (Whitewater Investigation) (appointed) - 1995-1997 (on detail from United States Attorney's Office)

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Law Clerk to Judge Roszel C. Thomsen,  
United States District Court for the  
District of Maryland (1976-1977)

2. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Steptoe & Johnson, 1330 Connecticut  
Avenue, N.W., Washington, D.C. 20036  
- associate (1977-1980);

Office of the United States Attorney,  
District of Columbia, 555 Fourth  
Street, N.W., Washington, D.C. 20001  
- Assistant United States Attorney  
(1980-1997) (Chief, Civil Division,  
1987-1997);

Office of the Independent Counsel  
(Whitewater Investigation) - Deputy  
Independent Counsel (1995-1997) (on  
detail from United States Attorney's  
Office);

Miller & Chevalier, Chartered, Suite  
900, 655 Fifteenth Street, N.W.,  
Washington, D.C. 20005 - Member  
(1998-present).

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As an associate at Steptoe & Johnson, I had a general litigation practice. In the United States Attorney's Office from 1980 to 1987, I was an Assistant United States Attorney handling a wide variety of civil litigation in the United States courts. I tried over 20 federal cases in the United States District Court and argued over 30 appeals in the United States Court of Appeals for the District of Columbia Circuit, including two *en banc* proceedings. In addition, as Assistant Chief and then as Chief of the Civil Division of that office from 1987 to 1997, I supervised approximately 40 Assistant United States Attorneys in a wide range of litigation involving the United States government. In that role, I oversaw and directly supervised numerous trials and appeals. I also occasionally handled or was actively involved in criminal matters in that office, especially relating to sensitive Grand Jury proceedings, to First Amendment issues, and to my responsibilities regarding the coordination of criminal and civil fraud investigations.

As Deputy Independent Counsel from 1995 through mid-1997, I coordinated and conducted a broad range of criminal investigations involving allegations of obstruction of justice, false statements, perjury, mail and wire fraud, bribery, conflicts of interest, and other possible offenses. I obtained extensive Grand Jury and other criminal investigative experience relating to sensitive issues involving the highest levels of the Executive Branch. I appeared on several occasions before the District Judge overseeing our Grand Jury investigations, and was lead counsel in a widely publicized

appellate proceeding involving novel issues of government privilege.

At Miller & Chevalier, I have a broad civil and criminal litigation practice. I represent health care and defense industry clients in civil and criminal fraud investigations and in *qui tam* actions brought under the False Claims Act, and advise health care and other clients on complex compliance and fraud prevention issues. In addition, I have an active general civil litigation practice, and handle some criminal matters as well. I am the Chairman of the Government Contracts Department of the firm, and a member of the firm Executive Committee.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In the Government, where my "clients" included virtually every federal agency as well as individual federal officials such as the President, the Attorney General and other cabinet officials, I specialized in complex civil litigation, including class actions, fraud matters, First Amendment and other constitutional issues and administrative law. Of course, in both the United States Attorney's Office and the Office of the Independent Counsel, the client is actually the United States and thus the American public. In private practice, I have continued to specialize in complex civil litigation including government contracts, health care and defense fraud, class actions and general commercial litigation. My clients include several large health care insurers and providers, and the leading defense contractors. In both the government and private practice, I have focused on the investigation and resolution of complex civil and criminal matters, including extensive



Grand Jury experience as well as trial and appellate practice.

1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have frequently appeared in court. I occasionally appeared in court from 1977 to 1980 while at Steptoe & Johnson. As an Assistant United States Attorney from 1980 to 1997, I appeared in the United States District Court for the District of Columbia virtually daily, and frequently in the United States Court of Appeals for the District of Columbia Circuit. In the Office of Independent Counsel from 1995 to 1997, I appeared before Grand Juries frequently and in court occasionally. While at Miller & Chevalier from 1998 to the present, my court appearances have been occasional.

2. What percentage of these appearances was in:
 

(a) federal courts;	99%
(b) state courts of record;	1%
(c) other courts.	0

3. What percentage of your litigation was:
 

(a) civil;	90%
(b) criminal.	10%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

15-20 cases to verdict or judgment as sole or chief counsel; approximately 5 cases as associate counsel. Over 30 appeals argued to final decision as sole or chief counsel.

5. What percentage of these trials was:
 

(a) jury;	5%
(b) non-jury.	95%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

During my professional career, I have personally handled scores of cases in the federal courts, many involving important decisions at the trial, appellate and even Supreme Court levels. Among the more significant litigated matters are the following, in all of which I represented, as principal/lead counsel, the United States or an agency or an official of the United States:

- (1) *In re Grand Jury Subpoena*, 112 F.3d 910 (8th Cir. 1997), cert. denied, 521 U.S. 1105 (1997) - this seminal decision rejected the application of a governmental attorney-client or work product privilege to shield from a federal grand jury the notes of conversations with First Lady Hillary Clinton taken by White House attorneys. I argued the case in the District Court before Judge Susan Webber Wright, and in the 8th Circuit before Judges Bowman, Wollman and Kopf. We prevailed, and the Supreme Court denied certiorari. The primary opposing counsel were David E. Kendall of Williams & Connolly (725 12th Street, N.W., Washington, D.C. 20005; Telephone (202) 434-5000), and Andrew L. Frey of Mayer, Brown & Platt (Suite 6500, 2000 Pennsylvania Avenue, N.W., Washington, D.C. 20006; Telephone (202) 463-2000).
- (2) *Community for Creative Non-Violence v. Clark*, 703 F.2d 586 (D.C. Cir.) (en banc), rev'd 468 U.S. 288 (1984) - I argued before the en banc Court of Appeals, which held 6-5 that camping is permitted in connection with a

First Amendment demonstration in Lafayette Park and on the Mall. I then worked closely with the Solicitor General and the Supreme Court reversed 7-2, ruling that the regulation prohibiting such activities is constitutional. Our position had prevailed before District Judge John Pratt. The en banc Court of Appeals consisted of Judges Robinson, Wright, Tamm, MacKinnon, Wilkey, Wald, Mikva, Edwards, R. Ginsburg, Bork and Scalia. Principal opposing counsel were Burt Newborn of the ACLU in New York City and Arthur Spitzer of the ACLU in the District of Columbia (Telephone (202) 457-0800).

- (3) *White House Vigil for the ERA Committee v. Clark*, 746 F.2d 1518 (D.C. Cir. 1984) - in a significant First Amendment case involving the balancing of Presidential security concerns and the rights of demonstrators on the White House sidewalk, the Court of Appeals upheld the entirety of the challenged regulatory package against constitutional attacks. The panel in the Court of Appeals consisted of Judges Wilkey, Wald and Starr. I was also lead counsel in the 2-week trial in the District Court before Judge Bryant. My co-counsel was Mitchell Berger, now of Patton Boggs LLP (2550 M Street, N.W., Washington, D.C. 20037; Telephone (202) 457-6000). Primary opposing counsel were John Vanderstar of Covington & Burling (1201 Pennsylvania Avenue, N.W., Washington, D.C. 20044; Telephone (202) 662-6000), and Arthur Spitzer of the ACLU in the District of Columbia (Telephone (202) 457-0800).
- (4) *Hubbard v. Administrator, Environmental Protection Agency*, 982 F.2d 531 (D.C. Cir. 1992) (en banc) - I argued to the en banc Court of Appeals, which held 9-2 that there is no waiver of sovereign immunity in the Administrative Procedure Act for a back-pay award to an individual denied federal employment in violation of his constitutional rights. The en banc court consisted of Judges Mikva, Wald, Edwards, R. Ginsburg, Silberman, Buckley, Williams, D. Ginsburg, Sentelle, Henderson and Randolph. Opposing counsel was Peter Broida (2009 14th Street N., Arlington, VA 22201-2514; Telephone (703) 841-1112).

- (5) *United States v. District of Columbia*, 897 F.2d 1152 (D.C. 1990), and *Twelve John Does v. District of Columbia*, 841 F.2d 1133 (D.C. Cir. 1988) - I was lead counsel in both the District Court and the Court of Appeals in several cases relating to D.C. prison overcrowding. In *Twelve John Does*, the Court of Appeals (R. Ginsburg, D. Ginsburg, and District Judge Robinson) reversed an order of District Judge June Green that had reinstated the Attorney General as a defendant in the prison overcrowding litigation, and also vacated the District Court's injunction barring the Attorney General from designating D.C. prisons as the place of confinement for prisoners convicted and sentenced in the Superior Court of the District of Columbia. Primary opposing counsel were Peter Nichols of Covington & Burling (1201 Pennsylvania Avenue, N.W., Washington, D.C. 20044; Telephone (202) 662-6000), and Edward Schwab, Assistant Corporation Counsel, District of Columbia (Telephone (202) 727-6252). In the second case, the Court of Appeals (Wald, R. Ginsburg and Williams) affirmed the decision of the District Court (Hogan) which enjoined the District of Columbia from refusing to accept prisoners sentenced in the Superior Court of the District of Columbia. Primary opposing counsel was Charles Reischel, Deputy Corporation Counsel, District of Columbia (Telephone (202) 727-6252).
- (6) *McKenzie v. Kennickell*, No. 73-0974 (D.D.C.) - I organized and managed a ten-attorney defense team to handle between 100 and 200 trials against a 50-attorney team for the plaintiffs during the relief phase of a large employment discrimination class action brought against the Government Printing Office. Ultimately, the case was settled after initial flights of several trials had occurred. In the course of my responsibilities as lead counsel, I also argued appeals in the case reported at 825 F.2d 429 (D.C. Cir. 1987), and 875 F.2d 330 (D.C. Cir. 1989). Principal opposing counsel in these proceedings were Douglas Parker of the Georgetown University Law School Institute for Public Representation (600 New Jersey Avenue, N.W., Washington, D.C. 20001; Telephone (202) 662-9535), and Roger Warin of Steptoe & Johnson (1330 Connecticut

Avenue, N.W., Washington, D.C. 20036; Telephone (202) 429-3000).

- (7) *Murray v. Gardner*, 741 F.2d 434 (D.C. Cir. 1984) - the Court of Appeals affirmed the dismissal of all claims and defined the scope of First Amendment protection to be afforded speech by a public employee. The plaintiff, an FBI special agent, had challenged his suspension for criticizing the competence of management. The arguments that I presented were successful in front of both the District Court (John Lewis Smith) and the Court of Appeals (R. Ginsburg, MacKinnon and District Judge Parker). The opposing counsel was Gilbert Kenneth Davis (Davis & Stanley, LLC, 9502-A Lee Highway, Fairfax, VA 22031; Telephone (703) 352-3850).
  
- (8) *Sea-Land Services, Inc. v. The Alaska Railroad*, 659 F.2d 243 (D.C. Cir. 1981), cert. denied, 455 U.S. 919 (1982) - in a novel case involving allegations of anti-competitive conduct and monopolization by the Alaska Railroad, which is owned and operated by the United States, the Court of Appeals adopted the position I presented, holding that the United States and its instrumentalities are not liable in antitrust actions under the Sherman Act. The appellate panel was Wright, MacKinnon and R. Ginsburg, and the District Court was Judge Pratt. Opposing counsel was J. Peter Shapiro of Seattle, Washington.
  
- (9) *Associated Metals and Minerals Corp. v. Carmen*, 704 F.2d 629 (D.C. Cir. 1983) - both the District Court (Judge Oberdorfer) and the Court of Appeals (Judges Robinson, MacKinnon and Mikva) rejected all attempts to enjoin GSA's sales of tin from the national defense stockpile of strategic materials, based on the arguments I presented on behalf of the government. The plaintiff had challenged the government's disposal of surplus tin as unduly disrupting the domestic market for tin. Opposing counsel was Stephen N. Shulman of Cadwalader, Wickersham & Taft (now with O'Connor & Hannan, 1666 K Street, N.W., Washington, D.C. 20006 (Telephone (202) 887-1400)).

(10) *Martin v. District of Columbia*, 812 F.2d 1425 (D.C. Cir. 1987) - in a seminal decision in the area, the Court (Judges Edwards, R. Ginsburg and Starr) defined the standards and availability of both absolute and qualified immunity for federal officials sued in their personal capacities. The plaintiff asserted claims of violations of his constitutional rights against Capitol Police officers. Subsequently, the case before the District Court (Judge H. Greene) ended upon the death of the plaintiff. Opposing counsel were Kerry Kircher and James Coleman, both of Wilmer, Cutler & Pickering (2445 M Street, N.W., Washington, D.C. 20037; Telephone (202) 663-3000), although neither is any longer at that firm.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Over the course of my career in public service and private practice, I have been involved in many significant legal activities which, for one reason or another, did not involve litigation or proceed to resolution through litigation. Included among those activities are the following:

- (1) As the Deputy Independent Counsel for the initial stages of the Whitewater Investigation from 1995 through mid-1997, I coordinated and conducted a broad range of criminal investigations involving allegations of obstruction of justice, false statements, perjury, mail and wire fraud, bribery, conflicts of interest, and other possible offenses. This was the "pre-Lewinsky" portion of the Whitewater Independent Counsel investigation. My responsibilities included not only managing large portions of the investigation and the office, but also personal responsibility for certain aspects of the investigation focused on activities in the White House. I had extensive appearances before the Grand Jury as well as other significant criminal investigative experience relating to sensitive issues

involving the highest levels of the Executive Branch. My responsibilities included being the principal contact with the President's counsel, both his private counsel (David Kendall of Covington & Burling) and the White House Counsel, as well as dealing directly with the Attorney General and her designees and many of the other most significant figures involved in the investigation. I was also principal liaison with both the Senate Whitewater Committee and the relevant House committees, and oversaw the constant press inquiries.

- (2) Early in my career as an Assistant United States Attorney, I was given responsibility for handling the extensive third-party subpoena enforcement actions involving sensitive government documents, and for protecting classified information of the Central Intelligence Agency and the National Security Agency, relating to the libel trial brought by Gen. William Westmoreland against CBS. These responsibilities required appearances before the District Court in Washington, in the Court of Appeals for the District of Columbia Circuit and on several occasions in the Southern District of New York, as well as extensive negotiation sessions with counsel for CBS (David Bois) and for Gen. Westmoreland (Daniel Burt). Throughout the course of these highly publicized and contested proceedings, no classified government information was ever disclosed.
- (3) Since I have been in private practice at Miller & Chevalier, a substantial portion of my time has been spent representing large health care entities in matters involving possible fraud and abuse in government programs. In these matters, I have represented companies during the course of internal investigations and, in some cases, dealt with the government prosecutors and investigators in addressing allegations of possible fraud. For example, in a matter involving allegations by a U.S. Attorney's Office and the OPM Inspector General of over \$150 million in fraud, I worked with the client and the government investigators and prosecutors over the course of two years, and ultimately convinced the government to agree that no fraud actions should proceed against the client. In another matter for a

large western health care entity, the government ultimately agreed after several months of discussions that no criminal or civil actions/penalties were appropriate in a matter involving alleged false statements to the government. I have represented another large health care insurer in a series of matters requiring extensive internal investigations of possible fraud and resulting disclosure to the government. To date, no actions have been taken against the client in any of these matters. All involve sensitive internal investigations, potential disclosure of issues to the government, and then dealing with government prosecutors and investigators in an attempt to avoid criminal or civil penalties or litigation. Over \$100 million in potential liability is at stake.



## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

No present or anticipated arrangements for the receipt of deferred income or other future benefits exist. I expect that any income or benefits due upon my departure from Miller & Chevalier would be paid or decided at that time.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate significant potential conflicts of interest. However, I will employ rigorous procedures and scrutiny to identify any potential financial or other conflicts at the outset of my involvement with any matter, and will then act in strict accordance with established rules and procedures of judicial and professional ethics. If recusal or divestment of financial interests is warranted, I will do so promptly.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Financial Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

**FINANCIAL STATEMENT**  
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	18	000	.00	Notes payable to banks-secured	32	000	.00
U.S. Government securities-add schedule				Notes payable to banks-unsecured		0	
Listed securities-add schedule	1246	500	.00	Notes payable to relatives		0	
Unlisted securities--add schedule - Law Firm Capital Acct	38	000	.00	Notes payable to others		0	
Accounts and notes receivable:		0		Accounts and bills due		0	
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	95	000	.00
Real estate owned-add schedule	500	000	.00	Chattel mortgages and other liens payable		0	
Real estate mortgages receivable		0		Other debts-itemize:		0	
Autos and other personal property	65	000	.00				
Cash value-life insurance	34	000	.00				
Other assets itemize:							
Federal Retirement Annuity -- Annual Amount (gross)	40	000	.00				
				Total liabilities	127	000	.00
				Net Worth	1814	500	.00
Total Assets	1941	500	.00	Total liabilities and net worth	1941	500	.00
CONFINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		0		Are any assets pledged? (Add schedule)	No		
On leases or contracts		0		Are you defendant in any suits or legal actions?	NO		
Legal Claims		0		Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax		0					
Other special debt		0					

## Schedule of Listed Securities (6/1/01)

Union First account	-	\$ 22,000.00
Sun Trust account	-	\$ 10,000.00
Fidelity Investment (Roth IRA)	-	\$ 1,100.00
City National Investment account	-	\$589,000.00
--Aim Const. Fund #2		
--Alliance Technology FD/C1		
--EFT UT Strategic Ser		
--EIF UT Select Ten Dow		
--EIF UT Select Ten Port		
--Invest. Co. of Amer. #004		
--Putnam Health Sciences		
--Washington Mutual Investors		
--Smith Barney MNY FD		
--Fidelity Adv Growth & Inc.		
--CNI Charter Prime Mny Fd		
Fidelity Invests. Account	-	\$160,000.00
--Fidelity Blue Chip Growth		
--Fidelity Dividend Growth		
American Funds Account	-	\$ 62,000.00
--Invest. Co. of Amer.		
--New Economy Fund		
Salomon Smith Barney Joint	-	\$150,000.00
--Citibank Money Fund		
--AIM Aggres. Growth		
--AIM Const. Fund C		
--GE Life & Annuity		
--Transamerica Life Annuity		
--Keyport Life Annuity		
--Maricopa Co., AZ Bond		
--MD State Health & Ed Bond		
Salomon Smith Barney IRA	-	\$132,000.00
--Alliance Tech FD C		
--Fidelity Adv. Tech Fund		
--GC Cap'l Mkts-Lg Cap Val.		
--GC Cap'l Mkts-Sm Cap Val.		
--GC Cap'l Mkts-Emerg.		
--GC Cap'l Mkts Int'l		
--GC Cap'l Mkts Lg Cap Growth		
--GC Cap'l Mkts Sm Cap Gr		
Salomon Smith Barney IRA	-	\$ 42,000.00
--GC Cap'l Mkts-Lg Cap Val		
--GC Cap'l Mkts-Sm Cap Val		
--GC Cap'l Mkts-Emerg		
--GC Cap'l Mkts-Int'l		
--GC Cap'l Mkts-Lg Cap Gr.		
--GC Cap'l Mkts-Sm Cap Gr.		

Salomon Smith Barney - L	-	\$ 9,400.00
--Strips Tint-US Treas		
Salomon Smith Barney - B	-	\$ 48,000.00
--Invest Co. of Amer.		
--GC Cap'l Mkts-Lg Cap Val		
--GC Cap'l Mkts-Sm Cap Val		
--GC Cap'l Mkts-Emerg		
--GC Cap'l Mkts - Int'l		
--GC Cap'l Mkts-Lg Cap Gr.		
--GC Cap'l Mkts-Sm Cap. Gr.		
Salomon Smith Barney - K	-	\$ 21,000.00
--AIM Const. Fund		
--Invest. Co. of Amer.		
Total		<u>\$1,246,500.00</u>

Real Estate Schedule (6/1/01)

Real estate owned -

Primary residence in Bethesda, MD

Real estate mortgages payable (\$95,000) -

On primary residence with Navy Federal Credit Union  
(approximately \$1827 per month for remaining period)

AO-10 (a)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Bates, John D.	<b>2. Court or Organization</b> Dist. Ct. - District of Columb	<b>3. Date of Report</b> 06/20/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge	<b>5. Report Type (check type)</b> X Nomination, Date 06/20/2001 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 05/31/2001
<b>7. Chambers or Office Address</b> Miller & Chevalier, Chartered 655 15th St., N.W., Ste. 900 Washington, D.C. 20005	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Member	Miller & Chevalier, Chartered
2 Member, Board of Directors	Washington Lawyers' Committee for Civil Rights and Urban Affairs
3	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1	NONE -- No reportable agreements
2	
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	Miller & Chevalier	231,000
2 1999	United States - retirement annuity	36,000
2000	Miller & Chevalier	273,000
4 2000	United States -- retirement annuity	36,000

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Bates, John D.

Date of Report

05/20/2001

CITATION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2001	Miller & Chevalier	115,000
6	2001	United States -- retirement annuity	15,000
7	1999	Stephoe & Johnson	
8	2000	Stephoe & Johnson	
9	2000	Georgetown University Law School	
10	2001	Stephoe & Johnson	
11	2001	Georgetown University Law School	



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Bates, John D.	Date of Report 06/20/2001
	(Includes those of spouse and dependent children. See pp. 16-54 of Instructions.)	

II. Page 1 INVESTMENTS and TRUSTS— income, value, transactions

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT				
1 Union First Account	A	Interest	K	T					
2 Sun Trust Accounts	A	Interest	J	T					
3 Fidelity Invest. -- Roth IRA	A	Interest	J	T					
4 City Nat'l Invest. Account									
5 --AIM Const. Fund #2	A	Dividend	L	T					
6 --Alliance Tech. FD/CL	A	Dividend	K	T					
7 --EFT UT Strategic Ser	B	Dividend	K	T					
8 --EIF UT Select Ten Dow	A	Dividend	K	T					
9 --EIF UT Select Ten Fort	A	Dividend	J	T					
10 --Invest. Co. of Amer. #004	C	Dividend	M	T					
11 --Putnam Health Sciences	A	Dividend	L	T					
12 --Wash. Mutual Invest.	B	Dividend	M	T					
13 --Smith Barney NNY FD	A	Dividend	J	T					
14 --Fidelity Adv Growth & Inc	A	Dividend	J	T					
15 --CNI Charter Primetmy Pd	A	Dividend	J	T					
16 Fidelity Invests. Account									
17 --Fidelity Blue Chip Growth	C	Dividend	L	T					

1st/2nd Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	G=\$100,001-\$1,000,000	H=\$1,000,001-\$5,000,000	I=\$5,000,001 or more
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000
3 Val Meth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment	T=Cash/Market	W=Estimated

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Bates, John D.		Date of Report 06/20/2001	
VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)  If not exempt from disclosure (2) Date: Month- Day (3) Value Code (I-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT
18 --Fidelity Dividend Growth	C	Dividend	L	T	
19 American Funds Account					
20 --Invest. Co. of Amer.	A	Dividend	K	T	
21 --New Economy Fund	A	Dividend	K	T	
22 Salomon Smith Barney Joint					
23 --Citibank Money Fund	B	Interest	J	T	
24 --AIM Aggres. Growth	A	Dividend	J	T	
25 --AIM Const. Fund C	A	Dividend	J	T	
26 --GE Life & Annuity	A	Dividend	J	T	
27 --Transamerica Life Annuity	A	Dividend	J	T	
28 --Keyport Life Annuity	A	Dividend	J	T	
29 --Maricopa Co., AZ Bond	D	Interest	L	T	
30 --MD State Health & Ed Bond	A	Interest	K	T	
31 Salomon Smith Barney IRA					
32 --Alliance Tech FD C	A	Dividend	K	T	
33 --Fidelity Adv. Tech Fund	A	Dividend	K	T	
34 --CG Cap'l Mkts-Lg Cap Val.	B	Dividend	K	T	
Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D5) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Bates, John D.		Date of Report 06/20/2001	
<b>VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value: (4) Gain: (5) Identity of Month: Code Code Code Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT
35 --CG Cap'l Mkts-Sm-Cap Val.	A	Dividend	R	T	
36 --CG Cap'l Mkts-Emerg.	A	Dividend	J	T	
37 --CG Cap'l Mkts Int'l	A	Dividend	K	T	
38 --CG Cap'l Mkts Lg Cap Growth	A	Dividend	K	T	
39 --CG Cap'l Mkts Sm Cap Gr.	A	Dividend	J	T	
40 Salomon Smith Barney IRA					
41 --CG Cap'l Mkts-Lg Cap Val	A	Dividend	J	T	
42 --CG Cap'l Mkts-Sm Cap Val	A	Dividend	J	T	
43 --CG Cap'l Mkts-Emerg.	A	Dividend	J	T	
44 --CG Cap'l Mkts-Int'l	A	Dividend	J	T	
45 --CG Cap'l Mkts-Lg Cap Gr.	A	Dividend	J	T	
46 --CG Cap'l Mkts-Sm Cap Gr.	A	Dividend	J	T	
47 Salomon Smith Barney - I					
48 --Strips Tint-US Treas	A	Interest	J	T	
49 Salomon Smith Barney - B					
50 --Invest Co. of Amer.	B	Dividend	J	T	
51 --CG Cap'l Mkts-Lg Cap Val	B	Dividend	J	T	
Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Bates, John D.

Date of Report  
06/20/2001

## VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT				
52 --CG Cap'l Mkts-Sm Cap Val	A	Dividend	J	T					
53 --CG Cap'l Mkts-Emerg	A	Dividend	J	T					
54 --CG Cap'l Mkts-Int'l	A	Dividend	J	T					
55 --CG Cap'l Mkts-Lg Cap Gr.	A	Dividend	J	T					
56 --CG Cap'l Mkts-Sm Cap Gr.	A	Dividend	J	T					
57 Salomon Smith Barney - K									
58 --AIM Const. Fund	B	Dividend	K	T					
59 --Invest. Co. of Amer.	A	Dividend	J	T					
60									
61									
62									
63									
64									
65									
66									
67									
68									

1 Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000

2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bates, John D.	06/20/2001

III. ADDITIONAL INFORMATION OR EXPLANATIONS.  
*(Indicate part of report.)*

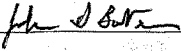
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bates, John D.	06/20/2001

## CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

6/22/01

Note: Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have always attempted to find time for appropriate participation in activities serving the disadvantaged, in both my personal and professional lives. While in law school, I worked at Legal Aid. During my brief time in private practice from the fall of 1977 to the spring of 1980, I handled several time-consuming pro bono cases. In one, I obtained political asylum in 1979 for a black South African woman who was in legitimate fear of persecution if forced to return to the apartheid conditions existing in South Africa at the time. In another, I assisted in persuading the federal government to change its policy and permit our client to treat a serious medical condition with government-produced marijuana.

I was in public service with the federal government from 1980-1997. There were, at that time, strict limitations on the pro bono representation that a government attorney, particularly an Assistant United States Attorney in the District of Columbia, could engage in, some of which have been modified more recently. Beyond my public service itself, during that period I focused my service to the disadvantaged on bar activities, including those that supported programs assisting the disadvantaged. I served on the Board of Governors and on several key committees of the District of Columbia Bar and was Chair of the Litigation Section of the Federal Bar Association, in addition to serving both the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia on committees dealing with court rules and procedures.

Since I have been in private practice at Miller & Chevalier starting in 1998, I have been a leading supporter of our pro bono program. I have also served on the Board of Directors

of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. I have personally handled two substantial pro bono cases with the Washington Lawyers' Committee involving race discrimination and hostile work environment claims. In the first, we achieved through settlement one of the largest recoveries in an individual discrimination case brought by the Washington Lawyers' Committee. As part of the resolution of this case, the employer agreed to substantial programs and changes in policies that benefit all of its minority employees. The second case was recently tried in the United States District Court for the District of Maryland, and the jury returned a \$2.4 million judgment for our client, which is the largest individual award ever in any case involving the Washington Lawyers' Committee.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

None of which I am aware. I was asked by someone I know in the Executive Office of the President whether I was interested in applying to be a District Judge. I then submitted an application consisting of a resume and cover letter, was interviewed by the Counsel to the President and an Associate Counsel to the President, was later interviewed at the Department of Justice, completed an FBI background investigation, and received these and other forms to complete as part of the process.



4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this judicial activism have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The role of the federal judiciary, and particularly the District Courts, is to decide cases through a just, fair and impartial application of the law. In most instances, the applicable law can be discerned from the relevant language of the Constitution, statutes, regulations, cases, and other pertinent authorities, although the judiciary must be

prepared to interpret the law where necessary and to state clearly the legal principles that guide a resolution of the matter at issue. In our system of justice, however, the rule of law should control, which requires adherence by judges to the law as written and established in the Constitution, by the Legislative Branch, and in prior judicial cases. District Courts best perform their role in the federal judiciary by determining the facts and then applying the law to those facts to resolve specific pending cases.

It is the duty and responsibility of the federal judiciary to consider fully, fairly and impartially all properly raised claims, arguments and defenses, including jurisdictional requirements. Courts should fairly apply the law in these areas as it has been established in the Constitution, statutes and controlling judicial precedent. So, too, the federal judiciary should generally strive to state the law clearly and apply it to resolve a pending case or issue, leaving compliance with a judicial ruling initially to the parties, rather than substituting itself, or some other administrator, for governmental and societal institutions better equipped to operate in a complex environment calling for the consideration of a wide variety of factors. However, that is not to say that there may not be some settings where broader requirements or even continuing oversight are necessary after less-intrusive options have failed. And, in all events, the federal judiciary must be prepared promptly and impartially to address and remedy violations of law or legal rights that may occur, whether in the dispute initially brought before the court or in the context of subsequent compliance with or enforcement of a judicial ruling.

Judge Johnson?

**STATEMENT OF WILLIAM P. JOHNSON, TO BE DISTRICT  
JUDGE FOR THE DISTRICT OF NEW MEXICO**

Judge JOHNSON. Mr. Chairman, I am very honored to be here today. I don't have any formal remarks other than to say I thank Senator Leahy and I thank you for chairing me this Committee and affording me the opportunity to be here. I am also very grateful and honored for the support of Senator Domenici and Senator Bingaman.

As far as my guests today, my wife, Loretta, is here.

Senator EDWARDS. Welcome, glad to have you.

Judge JOHNSON. Because of the time and distance and school commitments, our four children could not travel with us from New Mexico. But my mother and father, John and Shirley Johnson, are here.

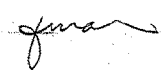
I might add that all my mother's relatives hail from Salisbury, North Carolina. So, Mr. Chairman, Salisbury was my home away from home growing up.

Senator EDWARDS. You have got a leg up already, I will tell you that.

[Laughter.]

Judge JOHNSON. My brother, John, he is an attorney in Roanoke, Virginia. He could not be here today, but I am very honored that my brother-in-law, Errol Chavez, is here. Errol is the special agent-in-charge of the San Diego field office for the Drug Enforcement Administration.

[The biographical information of Judge Johnson follows.]



## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
 William Paul Johnson (Nickname: Chip)
2. Address: List current place of residence and office address(es).  
 Home: Roswell, New Mexico  
 Office: Chaves County Courthouse  
 P. O. Box 1776, 401 N. Main St.  
 Roswell, NM 88201
3. Date and place of birth.  
 Born on February 16, 1959 in Roanoke, Virginia
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
 Wife: Loretta Chavez Johnson  
 Maiden Name: Chavez  
 Occupation: Chief Juvenile Probation & Parole Officer  
 Employer: New Mexico Children, Youth & Families Dept.  
 4 Grand Avenue  
 Roswell, NM 88201
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
 College: Virginia Military Institute, Lexington, VA  
 08/77 to 05/81  
 Bachelor of Arts degree, May 1981  
 Law School: Washington and Lee University, Lexington, VA  
 08/82 to 05/85  
 Juris Doctorate degree, May 1985  
 Other: Exeter College, Oxford University, England  
 05/80 to 08/80  
 Summer school course on British Government

National Judicial College, Reno, NV  
09/95 to 10/95 (4 weeks)  
General Jurisdiction Course

National Judicial College, Reno, NV  
07/99 to 08/99 (4 weeks)  
Facilitator, General Jurisdiction Course

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**Employment:**

02/95 - Present: State of New Mexico; Roswell, NM, District Judge \*

03/86 - 02/95: Hinkle, Hensley, Shanor & Martin, LLP, f/n/a Hinkle, Cox, Eaton, Coffield & Hensley; Roswell, NM; Associate Attorney and Partner

08/85 - 03/86: Bracewell & Patterson, LLP; Houston, TX; Associate Attorney

05/84 - 08/84: Bracewell & Patterson, LLP; Houston, TX; Summer Law Clerk

05/83 - 08/84: Defense Supply Service Washington (DSSW); the Pentagon; Summer Law Clerk

08/81 - 04/82: Virginia Military Institute; Lexington, VA; Admissions Counselor

**Boards and Organizations (volunteer service):**

New Mexico District Judges Association (1997-2000) President, Past President, Director \*

Camp Sierra Blanca (a non-profit entity which operates an environmental work camp for adjudicated delinquent male youth), Chairman of the Board of Trustees (1997 - Present) \*

Associated Marine Institutes (a non-profit entity with headquarters in Tampa, FL which operates Camp Sierra Blanca and 52 other juvenile programs in 7 states), Vice

Chairman and Chairman-Elect of the Program Development Committee (1999 - Present)

New Mexico's Juvenile Justice Advisory Committee, appointed by the Governor (1995 - Present)

New Mexico's Drug Enforcement Advisory Committee, appointed by the Governor (1995 - 1996) \*

Chaves County CASA (Court Appointed Special Advocates for abused and neglected children), founding board member, Board Vice Chairman and Chairman (1988 - 1994)

Chaves County Coalition for Youth, founding board member (1997 - 1998)

Roswell Refuge for Battered Adults, board member (1987)

Chaves County Teen Court, advisory board member (1996 - 1998)

First Presbyterian Church of Roswell, Elder (1989 - 1992)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

07/23/81: Commissioned 2<sup>nd</sup> Lieutenant, United States Army Reserve

04/82 - 08/82: Field Artillery Officer Basic Course, Fort Sill, OK

09/82 - 03/90: Reserve Duty, United States Army Reserve, attained rank of Captain  
(estimated)

03/90 - Present: Inactive reserve  
(estimated)

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Chaves County Bar Association, member and past Law Day Chairman (1986 - present)

American Bar Association, member (1986 - 1990)

Bankruptcy Law Section, State Bar of New Mexico, member (1989 - 1993)

Board of Legal Specialization, member (1993 - 1994) (board members appointed by New Mexico Supreme Court and have authority over specialization of lawyers)

Judicial Continuing Education Committee, member (2000 - present)

George L. Reese, Jr. Inns of Court, Member (1996 - present)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

New Mexico District Judges Association (lobbies New Mexico Legislature primarily on the issue of judicial salaries and other issues affecting the Judiciary).

Other organizations: First United Methodist Church of Roswell  
Virginia Military Institute Alumni Association  
Washington and Lee University Alumni Association  
Kappa Alpha Fraternity  
Philmont Scout Ranch Staff Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State Bar of Texas, member (1985 - 1995) (inactive since 1995)

State Bar of New Mexico, member (1986 - present)

United States District Court for the Southern District of Texas (admitted 02/28/86)

United States District Court for the Western District of Texas (admitted 12/04/86)

United States District Court for the District of New Mexico (admitted 12/09/86)

United States Court of Appeals for the Tenth Circuit (admitted 01/07/87)

United States Court of Appeals for the Fifth Circuit (admitted 12/18/87)

Supreme Court of the United States (admitted 08/16/91)

I became a New Mexico State District Judge in February of 1995 and continue in that capacity. As a sitting judge, I do not engage in the practice of law and so I do not know whether I am still admitted to practice before the above listed federal courts or whether my admission to any or all of the above listed federal courts has lapsed.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have not written or published any books, articles or reports. Further, I have not given speeches on constitutional law or legal policy, except that on occasion I have been the speaker at civic clubs and school classes where the topics have included juvenile crime and delinquency and the structure of the New Mexico judiciary. Additionally, in the last couple of years I have spoken to groups and organizations regarding the preservation and restoration of the historic Chaves County Courthouse in Roswell, New Mexico. Usually, I would make a few general comments on the topic and then I would use a question and answer format for the remainder of the time. There were no formal speeches prepared and I am not aware of any press coverage on these informal talks.

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was on July 17, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

02/95 - Present                      District Judge, Fifth Judicial District, County of Chaves,  
State of New Mexico

In New Mexico, the District Court is the trial court of record and the court of general jurisdiction. As a general jurisdiction judge, I preside over adult criminal, children's court, civil, administrative appeals, domestic affairs, domestic violence and child support enforcement cases.



When there is a judicial vacancy on the District Court, applications are accepted and then a Judicial Nominating Commission is convened to interview the applicants and to send to the Governor the names of those applicants the Nominating Commission believes to be qualified. The Governor selects someone from the name(s) of applicants recommended by the Nominating Commission. A district judge appointed by the Governor must run in a partisan election the following general election in November of even numbered years. If the district judge wins in the general election, then he or she has a 6 year term. At the end of the 6 year term, the district judge must run in a retention election where the judge's name is on the ballot and the voters vote either Yes or No to retain the judge. In order for a district judge to be retained, he or she must receive the votes of 57% of the voters in the election. If a district judge is retained, then he or she receives another six-year term.

During the 1994 Legislative Session, the New Mexico Legislature authorized and the Governor approved the creation of a new district judge position in Roswell, Chaves County, New Mexico effective January 1, 1995. Chaves County is one of three counties in the Fifth Judicial District, the other two are Eddy and Lea Counties. The Fifth Judicial District is a large geographic area consisting of the three counties that make up the southeastern part of New Mexico. There are eight district judges in the Fifth Judicial District.

I applied for the district judge position in December of 1994. In January of 1995, the Judicial Nominating Commission met and sent my name, plus three other names, to the Governor for appointment as a district judge. I was appointed District Judge by the Governor of New Mexico and was sworn in on February 24, 1995. In the general election of 1996, I ran unopposed and was elected to a 6 year term as a district judge effective January 1, 1997. I am scheduled to stand for retention election in November of 2002.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

1. Citations:

- (1). Citations for the ten most significant opinions you have written.

In New Mexico, district court orders and opinions are not published. Accordingly, I do not have any published opinions. Since I am a general jurisdiction judge and hear

many types of cases, I often announce my decisions on the record and I typically rely on counsel to prepare most of the orders, as I do not have a law clerk and do not have the time to routinely prepare written orders and opinions. I am answering the first part of Question 15 by listing ten of the most significant cases over which I have presided as the trial judge. Most of the decisions I made in the following cases were announced on the record and the orders were drafted by counsel; however, in the Caviness litigation described below, I did prepare a number of written documents copies of which I have enclosed. I am also enclosing copies of any unpublished appellate decisions regarding the following cases.

1. State v. James Lee Harris, 5<sup>th</sup> Judicial District, County of Chaves, State of New Mexico, Case No. CR-96-157.

Mary Simmons, who had been in a relationship with Defendant, obtained a domestic violence temporary restraining order against Defendant prohibiting him from coming within 100 yards of Ms. Simmons' trailer where she resided. After being served with the TRO, Defendant late at night showed up at Ms. Simmons' residence. Defendant kicked in the door and encountered Ms. Simmons with the Victim. The Defendant told Ms. Simmons to be quiet and told the victim to "sit there and let's talk this over." The Victim attacked the Defendant and he stabbed the Victim with a knife. Defendant later took the Victim's body out of the trailer and dumped in a remote part of Chaves County.

Defendant was charged with murder and breaking and entering. The jury returned a guilty verdict of second degree murder and breaking and entering. The New Mexico Court of Appeals in an unpublished opinion affirmed the judgment and sentence I imposed for second degree murder and for breaking and entering.

2. State v. Quesimo Mesa Rocha, 5<sup>th</sup> Judicial District, County of Chaves, State of New Mexico, Case No. 95-113.

The Victim's body was found by police on a road near Roswell. She was shot seven times at close range. The Victim was Defendant's step-mother. At the time of the murder, the Victim was still married to Defendant's father; however, they had separated and the Victim now had a boyfriend. Police sought Defendant for questioning but were unable to locate him. Eventually Defendant was apprehended by INS agents in Colorado. Defendant waived his Miranda rights and spoke with an INS agent. The interview was videotaped. The Defendant confessed to the murder. Defendant sought to keep out the videotaped confession with the INS agent on the basis that the confession was coerced. I ruled the confession was voluntary and admitted the videotape interview into evidence. At the conclusion of the trial, the jury convicted Defendant of premeditated first-degree murder and kidnapping. I entered a judgment and sentence on the first degree murder as

charged in count one and sentenced Defendant to life imprisonment plus eighteen years for the kidnapping charge.

The Defendant appealed raising five issues: (i) whether Defendant's due process rights were violated by the confession being admitted at trial, (ii) whether Defendant's convictions and sentencing for the offenses of felony murder and kidnapping violated his right to be free from double jeopardy, (iii) whether Defendant received ineffective assistance of counsel, (iv) whether there was sufficient evidence to support the convictions and (v) whether hearsay statements were properly admitted at trial. In an unpublished opinion, the Defendant's convictions and sentence were affirmed by the New Mexico Supreme Court.

3. McPhearson, et al. v. Associated Milk Producers, Inc., 5<sup>th</sup> Judicial District, County of Chaves, State of New Mexico, Case No. CV-93-232.

This case involved claims by truck drivers for payment of overtime wages owed pursuant to the New Mexico Wage and Hour Act. The case was filed in 1993. I inherited the case in 1995 upon the retirement of the presiding judge. Counsel for plaintiff and defendant had previously attempted an interlocutory appeal on the issue of whether federal law preempted state law on the overtime issue because there was no dispute that the defendant's method of calculating overtime was consistent with the federal Fair Labor Standards Act. The Court of Appeals declined the application for interlocutory appeal. The parties agreed to bifurcate the liability issues from the damage issues and submit the bifurcated issues of liability to me on stipulated facts. I ruled in favor of the Plaintiffs on the liability issues, rendered findings of fact and conclusions of law and then the Court of Appeals rendered an opinion affirming my decision. Based on additional stipulations entered into by the parties while the case was before the Court of Appeals, it remanded for calculation of damages pursuant to the stipulation of facts. Plaintiffs then filed a motion to maintain a class action or in the alternative, to amend the complaint to add new plaintiffs. I denied the motion to maintain class action, but granted the motion to amend to add new party plaintiffs based on the stipulation agreed to at the Court of Appeals. I then entered judgment for the plaintiffs and that judgment was appealed. On June 22, 2001, the New Mexico Court of Appeals issued its Memorandum Opinion in Appeal No. 20,214 affirming my rulings.

4. Raymond T. Ramirez, as Guardian and Conservator for Josephine Ramirez, an incapacitated person, Plaintiff v. Ramesh Navak, M.D., et al. Defendants, 5<sup>th</sup> Judicial District, County of Chaves, State of New Mexico, Case No. CV 98-181.

Josephine Ramirez's daughter unfortunately got involved in some way with a gang and one Saturday night a rival gang member drove by the Ramirez home and did a drive-by shooting using an AK-47 assault rifle. Just as the shooter fired, Ms. Ramirez stood up from the dinner table and the bullet struck her in the chest. The shooting occurred around 10:00 p.m. and Ms. Ramirez was transported to the Roswell hospital shortly after the shooting. She was stabilized and monitored. Ms. Ramirez's condition got worse so the emergency room doctor made the decision around 2:00 a.m. to have Ms. Ramirez transported by air ambulance to the University of New Mexico Medical Center (UNMMC) in Albuquerque, which is the only level 1 trauma center in New Mexico. By the time Ms. Ramirez arrived at UNMMC, it was approximately 10:00 a.m. on Sunday morning. Ms. Ramirez's heart had sustained injury from the bullet wound and so the decision was made that Ms. Ramirez would undergo heart surgery to repair the damage. Ms. Ramirez made it to surgery at 2:00 p.m. that Sunday afternoon, but as she was put under anesthesia, her heart stopped. The surgical team was successful in getting Ms. Ramirez's heart pumping again; however, her brain had been deprived of oxygen long enough that Ms. Ramirez sustained permanent and severe brain injury such that she is now in a permanent vegetative state.

Ms. Ramirez's former husband Raymond Ramirez brought suit on behalf of Ms. Ramirez against the emergency room doctor in Roswell and four treating physicians from UNMMC. Although Mr. and Mrs. Ramirez were divorced, they had reconciled and had been living together for several years before the shooting. Mr. Ramirez provides round the clock care for Ms. Ramirez. The claimed medical negligence in simple terms was that the physician defendants took way too much time to get Ms. Ramirez to surgery to stop the bleeding which was occurring in the heart.

During the pre-trial phase of the case, I had to resolve numerous discovery disputes and rule on issues such as whether sovereign immunity had been waived as to certain claims under the tort claims act and whether Mr. Ramirez could assert spousal claims allowed under New Mexico law since he and Ms. Ramirez were legally divorced even though they were living together as though they were husband and wife. I ruled against the Plaintiff on both of these issues.

The jury trial lasted two weeks. Renowned physicians from Phoenix, Dallas and Houston testified as expert witnesses for both sides. After a day and a half of deliberations, the jury ruled in favor of the defendants. Mr. Ramirez appealed raising issues relating to jury selection. The Court of Appeals in an unpublished opinion affirmed.

5. Janice Caviness, individually and as Personal Representative of the Estate of Gary Caviness, Deceased, vs. Herschel Caviness, Fifth Judicial District Court, County of Chaves, State of New Mexico, Case No. CV-97-121

Herschel Caviness and Gary Caviness were father and son. Janice Caviness was Gary's wife. In 1974, Herschel and Gary acquired a large ranch in southeastern New Mexico. They did not formalize in writing their business arrangement. Gary lived on the ranch and served as foreman. Herschel routinely bought and sold large numbers of cattle and he would graze his livestock on the ranch. Gary and Janice owned livestock and grazed their livestock on the ranch. Neither Herschel nor Gary accounted to each other for the livestock each one ran on the ranch. Since Gary was ranch foreman, he would care for Herschel's cattle as well as his own. The ranch is situated in an oil and gas producing area of New Mexico, and while Herschel and Gary did now own the minerals underneath the ranch, they did receive considerable sums of money from various oil and gas companies representing payments for use of the surface. As ranch foreman, Gary negotiated surface use payments with the oil and gas companies and collected the payments.

In 1995, Herschel discovered that Gary had diverted for his own personal use significant sums of surface damage funds sent by oil and gas companies. Herschel was in the process of instituting legal action against Gary to collect the embezzled funds. Gary suffered from depression and in January 1996, he committed suicide. Janice, both individually and as personal representative of Gary's Estate, filed suit against Herschel and he counterclaimed against Janice. This was the beginning of what would turn out to be a very long and bitter legal battle that is presently continuing in the New Mexico Court of Appeals and the United States Bankruptcy Court for the District of New Mexico. Janice filed bankruptcy, but after I had rendered final judgment.

Herschel claimed the ranch was the main asset of a partnership known as Caviness Cattle Co., owned 80% by Herschel and 20% by Gary. Janice claimed the ranch was owned equally by Herschel and Gary as tenants in common. Since there were never any documents defining Herschel's and Gary's business relationship, I denied both parties summary judgment motions and, with agreement of counsel, bifurcated the case and proceeded to first try the issue of ownership of the ranch. I entered formal findings of fact and conclusions of law holding that the ranch was the main asset of Caviness Cattle Co., a partnership owned 80% by Herschel and 20% by Gary. Although I ruled in favor of Herschel on ownership of the ranch, I imposed an equitable lien in favor of Gary because I found that Herschel had made oral promises to Gary that if he stayed and worked the ranch as foreman, he would own 50% of the ranch when the mortgage was paid in full. I then set a second trial to try the remaining claims between the parties including what, if any value, was to be assigned to the Estate's equitable lien.

It should be noted that Herschel's attorney never bothered to present any evidence at the first trial about Gary's embezzlement of partnership funds, so the second trial was the first time I learned about Gary's embezzlement of partnership funds. Since Gary had embezzled partnership funds, I ruled that the Estate's equitable lien was worth zero based on the equitable doctrine of "unclean hands." I prepared a second set of findings and conclusions concerning the value of the partnership and the offset that would have to be made out of the Estate's 20% interest. Final judgment was entered and the case is presently on appeal.

6. State v. Wendy Contreras, Fifth Judicial District, County of Chaves, State of New Mexico, Case No. 2000-31.

The Defendant, Wendy Contreras, was charged with first degree murder in the stabbing death of Tina Palma and was charged with two counts of aggravated battery in the stabbing injuries of two other girls. Under New Mexico law, the legal drinking age is 21. A young lady who just turned 18 decided to have a party to celebrate her birthday. She used a friend's house for the party because her friend's parents were out of town. The girls acquired a keg of beer and before too long, lots of teenagers showed up at the party. Nearly everyone at the party was between the ages of 14 and 22 and everyone was drinking. At some point in the evening, a fight broke out among a group of girls. The Defendant had a knife and began stabbing and slashing. Tina Palma saw that one of her friends was being attacked by the Defendant and so Tina ran over to assist her friend. The Defendant stabbed Tina in the heart severing two arteries. Tina bled to death on the way to the hospital.

The Defendant was incarcerated pending trial and she wrote several letters to her sister. The Defendant asked her sister to speak with certain witnesses to make sure they testified in a manner favorable to the Defendant. There was a party at the sister's house and her boyfriend got stabbed. The police responded to the call and the police asked the Defendant's sister if they could search her apartment. She consented and signed a blanket waiver. A detective saw the letters sitting on the sister's table and so the detective obtained a search warrant for the letters. At the suppression hearing, I ruled the letters admissible on the basis that the Defendant did not have standing to challenge the search of her sister's apartment. In addition to the letters, the State presented eyewitness testimony and DNA evidence linking the Defendant to the murder weapon. The jury convicted Defendant on depraved heart/depraved mind murder, which is first degree murder under New Mexico law. I imposed a life sentence and the case is presently on appeal.

7. Belva Teel, as Personal Representative of the Estate of Jason Teel, Deceased, Plaintiff, vs. Albert Lewis Hall and Royal Business Forms, Inc., Defendants, Fifth District Court, County of Chaves, State of New Mexico, Case No. CV-97-155.

This case involved a tragic accident on Interstate 10 in southwestern New Mexico. Paul Teel and his two sons, Jason and Ben, went on a fishing trip in Mexico. They drove an older model Jeep Wagoneer and pulled their fishing boat on a trailer. They were returning from Mexico and near the Arizona/New Mexico border, Paul Teel decided to go to sleep in the back seat. He let 16-year old Jason drive. The accident occurred in a desolate area of New Mexico around 11:00 p.m. The evidence at trial showed that Jason was driving eastbound about 45 MPH. The speed limit at that time was 65 MPH. Albert Lewis Hall was a truck driver for Royal Business Forms, Inc., a Texas corporation which leased a couple of eighteen wheel tractor-trailer rigs to deliver its business forms to customers on the west coast. Hall was driving his eighteen wheel rig eastbound at 65 MPH. Hall's truck had a governor on the engine which prevented the truck from exceeding 65 MPH. Hall did not see the Wagoneer or the boat trailer and drove into the back of the boat. The force of the eighteen wheeler colliding with the boat caused the Wagoneer and trailer to "jackknife" and sent the Wagoneer rolling. None of the Wagoneer occupants were wearing seatbelts. Jason was catapulted into the air and landed in the westbound lanes of I-10. It was not known whether Jason died on impacting the westbound lanes of I-10 or from the automobile that ran over Jason as he lay in the road. Paul Teel was also killed. Amazingly, Ben Teel walked away from the collision without any serious physical injury.

The case was tried to a jury. Hall testified that he never saw the Wagoneer or boat trailer until he collided with the boat. One of the major questions of fact concerned whether the taillights on the boat trailer were operating. The greater weight of the evidence showed that the trailer lights were not working. New Mexico is a comparative fault state. The jury found that Hall was 25% at fault and his employer, Royal Business Forms, Inc. 5% at fault. Jason Teel was assessed 25% fault and his father, Paul, was assessed the remaining 45% of fault. No appeal was taken.

8. State v. Ruben Jaramillo, Fifth Judicial District, County of Chaves, State of New Mexico, Case. No. CR94-287.

The Defendant was charged with aggravated battery for the stabbing of his girlfriend. Prior to trial, the victim ignored her subpoena and left town. The case proceeded to trial and I ruled the victim was an unavailable witness because she had ignored her subpoena and the State could not locate her. I admitted under the exceptions to the hearsay rule the victim's statements that she made immediately

following the stabbing as she laid on the ground wounded and waiting for an ambulance. The jury convicted and the New Mexico Court of Appeals affirmed the conviction.

9. State v. Jimmy Barela, Fifth Judicial District, County of Chaves, State of New Mexico, Case No. CR96-153.

The Defendant, who owned and operated a car body shop, was arrested for trafficking cocaine and possession of marijuana after two incidents in which he sold cocaine to an undercover agent. At trial, Defendant testified that the only contact he had with the undercover agent concerned body repair work on the agent's car. Defense requested an entrapment instruction and I denied the request because the Defendant testified that he did not commit the offenses at issue. The jury returned a guilty verdict and the Defendant was sentenced for a term of imprisonment. Subsequently, the New Mexico Supreme Court in an unrelated case recognized the defense of objective entrapment. The New Mexico Court of Appeals held that objective entrapment was not available as a defense to the Defendant and affirmed his convictions.

10. State v. Anthony Maxwell, Fifth Judicial District, County of Chaves, State of New Mexico, Case No. CR96-158.

This case involved an undercover narcotics agent posing as a welder and then buying drugs from the Defendant on four separate occasions. The Defendant was one of a number of individuals targeted by the local narcotics task force. At trial, Defense made an oral motion in limine to exclude any reference to Defendant being a target of the narcotics task force. I granted the motion subject to the state being able to use this information on rebuttal if Defendant "opened the door" to such information. One of the state's witnesses inadvertently made a reference to Defendant being a target. Defense made a motion for new trial and I denied the motion. I offered to give a curative instruction which Defense declined. The Defendant took the stand in his own defense. The Defendant had a prior felony conviction for trafficking and he wanted to admit to the prior felony, but exclude from the jury the specific name of the offense. I overruled the Defense's request because I felt that the specific prior felony conviction went to the Defendant's credibility as a witness. The jury convicted and the New Mexico Court of Appeals affirmed the conviction and my rulings.

- (2) Short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.



Since I became a state district judge in 1995, I have been reversed by the New Mexico Court of Appeals or the New Mexico Supreme Court in nine cases; however, in two of the nine cases, I was reversed by the Court of Appeals but then the Supreme Court reversed the Court of Appeals and affirmed my decisions. Accordingly, I have been reversed a net seven times since I became a trial judge. As for those cases where I have been affirmed, I am not aware of any appellate decisions criticizing my substantive or procedural rulings. Copies of unpublished appellate opinions in the following cases are enclosed.

a. State v. Cleve, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23 (N.M. 1999).

The Defendant, Charles Cleve, was a rancher, and in the late 1970's began experiencing problems with excessive numbers of deer coming onto his property and destroying his crops. Mr. Cleve sought the help of the New Mexico Department of Game and Fish. The Game and Fish Department, for a period of about twenty years, attempted numerous times to eradicate Mr. Cleve's deer problems all to no avail. Finally, Mr. Cleve had enough of the deer and decided to kill some of them. He shot at least thirteen deer and snared two others. There was a neighboring fish camp, and witnesses reported that Mr. Cleve shot in the direction of the camp and bullets had gone into the camp area. The State charged Mr. Cleve with three counts of negligent use of a deadly weapon, seven counts of cruelty to animals and fifteen counts of unlawful hunting. The jury found Mr. Cleve guilty of two counts of unlawful hunting, two counts of cruelty to animals and one count of negligent use of a deadly weapon. The two snared deer were the basis for the unlawful hunting and cruelty to animals' convictions. A state statute makes it a crime to torture, mutilate, or cruelly kill any animal. NMSA 1978 § 30-18-1 (1963). Mr. Cleve argued at trial that the statute was intended to cover only domestic animals. I ruled as argued by the State that the statute, by its plain language, was intended to cover any animal. Mr. Cleve appealed the unlawful hunting and cruelty to animals' convictions. The Court of Appeals affirmed my rulings and the jury verdicts in State v. Cleve, 1997-NMCA-113, 124 N.M. 289, 949 P.2d 672 (N.M. App. 1997). The New Mexico Supreme Court, however, interpreted the statute to apply only to domesticated animals or wild animals previously reduced to captivity. The Court stated that the New Mexico Legislature had intended only to protect domestic animals and animals in captivity. Alternatively, even if the Legislature had intended to protect wild animals, the Court found that state law governing hunting and fishing preempted application of the cruelty to animals statute to wild animals. The Court reversed Mr. Cleve's convictions for unlawful hunting violation and for violation of the cruelty to animals statute.

- b. State v. Magby, 1998-NMSC-042, 126 N.M. 361, 969 P.2d 965 (N.M. 1998).

This case involved the tragic death of a four-year old girl. A mother and her four-year old daughter were horseback riding with a group of adults. The girl was sitting on the horse behind her mother. The Defendant, Robert Magby, and some of the other adults were playing jokes on each other by riding up, dismounting and running over to another horse and removing the bridle so the rider would have to dismount and re-bridle the horse. Mr. Magby ran up to remove the bridle off of the horse that the mother and girl were riding. The mother told Mr. Magby not to remove the bridle but he did anyway. For reasons unknown, the horse bolted and started running toward the barn. Since Mr. Magby had removed the horse's bridle, the mother could not stop the runaway horse. The little girl fell off the back of the horse and hit her head on a large rock. She died from her head injuries. The State charged Mr. Magby with child abuse resulting in death.

At trial, the jury returned a guilty verdict on the offense of child abuse resulting in death. The New Mexico statute under which Mr. Magby was charged provided that abuse of a child consists of negligently, and without justifiable cause, causing or permitting a child to be placed in a situation that may endanger the child's life or health. NMSA 1978 § 30-6-1 (1973). I instructed the jury that it must find that Mr. Magby knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child in order to find that he had negligently caused child abuse to occur. This instruction was in accordance with the New Mexico Uniform Jury Instruction ("UJI") for negligent child abuse in effect at the time of trial. UJI 14-602 NMRA 1998. I refused a request by defense counsel to give the jury an instruction defining reckless disregard. The Supreme Court found that the use of the word "negligently" and the words "reckless disregard" in UJI 14-602 could confuse jurors on the critical issue of *mens rea*. The Court reversed Mr. Magby's conviction, remanded the case for a new trial, and ordered the UJI Criminal Committee to formulate a new instruction with the definition of reckless disregard for use in negligent child abuse cases.

- c. State v. Livingston, No. 24,611, slip op. (N.M. January 26, 1999).

New Mexico has a habitual offender statute mandating sentence enhancement of a defendant based on the number of prior felony convictions. A four-year sentence enhancement is mandated for a defendant who has two prior felony convictions. In 1996, the Defendant, Kenneth Livingston, entered into a plea agreement in which he pled guilty to a fourth offense DWI charge for an eighteen-month sentence with twelve months suspended. As part of the plea agreement, the State dismissed a felony failure-to-appear-at-trial charge. Additionally, the plea agreement provided for a four-year sentence enhancement based on two prior felony convictions, so Mr. Livingston had a total four and a half-year sentence.

In 1997, the New Mexico Supreme Court held that the New Mexico habitual offender enhancement statute did not apply to convictions for fourth offense DWI. State v. Anaya, 1997-NMSC-010, 123 N.M. 14, 933 P.2d 223 (N.M. 1997). Based on this ruling, Mr. Livingston petitioned for habeas relief arguing that his four-year enhancement was illegal. I granted the writ finding that the four-year enhancement was illegal under Anaya, and I severed the illegal four year enhancement from Mr. Livingston's sentence. On appeal, the Supreme Court agreed that the enhancement was illegal under Anaya, but held that the proper remedy when a sentence was imposed pursuant to a plea agreement was to vacate the plea agreement since the plea agreement stands or falls as a unit.

- d. In re Jason L., 1999-NMCA-095, 127 N.M. 642, 985 P.2d 1222 (N.M. App. 1999) overruled by State v. Jason L., 2000-NMSC-018, 2 P.3d 856 (N.M. 2000). Jason L., a juvenile, was arrested for unlawful possession of a handgun. Jason moved to suppress the handgun because the seizure of his person and subsequent search were in violation of his rights under the Fourth Amendment of the United States Constitution. I granted Defendant's motion because the search of Defendant was based solely on his being in the company of another person who was found to be carrying a concealed handgun. I based my ruling on a prior New Mexico Court of Appeals case that I believed to be controlling, State v. Eli L., 1997- NMCA-109, 124 N.M. 205, 947 P.2d. 162 (officer must possess, at the time the child was stopped, reasonable individualized suspicion that the child had committed or was about to commit a crime). The Court of Appeals reversed my ruling and held that, once the search of Jason's companion revealed that the companion was carrying a concealed handgun, reasonable suspicion existed to search Jason. The Supreme Court, however, reversed the Court of Appeals and affirmed my order suppressing the evidence in an opinion which three justices concurred in the majority with one justice specially concurring and the remaining two justices dissenting.
- e. Madsen v. Scott, 1998-NMCA-092, 125 N.M. 475, 963 P.2d 552 (N.M. App. 1998) overruled by Madsen v. Scott, 1999-NMSC-042, 128 N.M. 255, 992 P.2d 268 (N.M. 1999).

Shawn Scott was a homeowner ("Homeowner") who had several guns in his home. Homeowner decided to go visit relatives out of state, so Homeowner asked a friend and coworker, Melvin Franklin ("Housesitter"), to house sit. Homeowner gave instructions and rules to Housesitter, including not allowing anyone to touch Homeowner's guns and not having any wild parties. Housesitter received permission for his brother, Richard, to stay in the house. Jason Madsen was a friend of Richard. Homeowner, Housesitter, Richard and Jason all had an interest in guns. Homeowner's guns were located at the house, unsecured and unloaded and there was no ammunition belonging to Homeowner at the house during his absence.

Richard brought his own handgun and ammunition to Homeowner's house. Housesitter or Richard gave Jason permission to stay at the house without Homeowner's knowledge or consent. On Super Bowl Sunday, Housesitter and Richard had several people at Homeowner's for a party, including Jason. Richard and Jason started playing "quick draw" with Richard using his own handgun and Jason using Homeowner's handgun. Richard thought his handgun was unloaded; however it was loaded and Richard accidentally discharged the gun killing Jason. Jason's parents filed suit against Richard and Homeowner claiming that Housesitter and Richard were Homeowner's employees, agents or servants, that Housesitter negligently failed to control and supervise the use of weapons in the house by Richard and Jason, and that Homeowner was vicariously liable for the negligence of Housesitter and Richard. I granted summary judgment in favor of Homeowner finding there was no genuine issue of material fact and that no principal-agent relationship existed between Homeowner and Housesitter as a matter of law. A majority of the Court of Appeals reversed my granting of summary judgment finding that there were genuine issues of material fact regarding whether an employer-employee relationship was created between Homeowner and Housesitter, whether Housesitter was acting within the scope of his employment when he failed to act and whether this type of accident was foreseeable. The Supreme Court, in reversing the Court of Appeals and affirming my grant of summary judgment in favor of Homeowner, held that Homeowner was not an employer or principal and that the accident was not foreseeable.

- f. Strain v. New Mexico Bd. of Architectural Examiner's, No. 20,971, slip op. (N.M. App. May 3, 2000).

This case was the culmination of a lengthy administrative and court battle between Stefan Strain, a licensed architect ("Strain"), and the New Mexico Board of Architectural Examiners (the "Board"). In accordance with the Uniform Licensing Act ("ULA"), the Board sent Strain a notice of contemplated action giving Strain notice of reasons that would justify revoking Strain's architectural license. Strain exercised his right to a formal hearing. Under the ULA, the Board had the option of conducting the hearing before the members of the Board or to designate a hearing officer to preside over the hearing. The Board elected to utilize a hearing officer and the hearing officer proceeded to conduct a formal evidentiary hearing. After concluding the hearing, the hearing officer made written recommended findings of fact and conclusions of law wherein the hearing officer found that there was no violation by Strain of the New Mexico Architectural Act or the rules and regulations adopted by the Board. The Board then set the matter for one of its regular meetings. The Board's prosecuting attorney filed objections to the hearing officer's findings and conclusions and these objections were considered by the Board when it made its final decision. Strain filed a response to the prosecuting attorney's objections, but the Board did not receive these in time to consider them

at the meeting. The Board did consider Strain's response at a special meeting a month later. At this later meeting, the Board voted to revoke Strain's license. Strain was not provided written notice of this special meeting.

Strain sought review of the administrative action in district court. I overturned the Board's decision to revoke Strain's license. I found that Strain had a due process right to notice of the special board meeting at which the Board voted to revoke his license. Further, I found that the Board acted in an arbitrary and capricious manner when the Board altered the hearing officer's findings and conclusions and made new findings and conclusions. The Board sought appellate review of my decision and the Court of Appeals reversed my decision and remanded the case for entry of an order affirming the Board's decision. The Court of Appeals found that Strain was afforded due process when given notice of the formal hearing and an opportunity to present his case at that hearing; Strain was not entitled to be present and to be heard at every phase of the proceeding. The Court also held that the Board did not act in an arbitrary and capricious manner in altering the hearing officer's findings and conclusions after the Board had reviewed the record of the formal hearing.

- g. Valley Bank of Commerce v. Porter, No. 18,117, slip op. (N.M. App. March, 26, 1997).

I granted summary judgment to the Valley Bank of Commerce ("Bank") on its complaint for money due on a promissory note. The Bank based its motion on undisputed facts showing a deficiency owing on the note. The Porters appealed and argued there were issues of fact raised by their defense of accord and satisfaction. The Bank believed that any evidence of accord and satisfaction was insufficient as a matter of law, and that the statute of frauds barred the defense because there was no writing between the Bank and the Porters to show an accord and satisfaction. The Court of Appeals reversed, finding that the conduct of the parties raised a factual issue regarding whether there was an accord and satisfaction. The Court also found that there was a fact issue whether the writings presented by the Porters were sufficient to satisfy the statute of frauds requirement, and there was a fact issue as to whether equitable principles removed the statute of frauds bar to the Porters' defense because it was possible a jury could find that the Porters reasonably relied on statements allegedly made by the Bank's president that the debt was satisfied.

- h. State v. Carter, No. 17,542, slip op. (N.M. App. October 15, 1996).

The Defendant, Billy Carter, pled no contest to possession of methamphetamine with intent to distribute, reserving his right to appeal the denial of his motion to suppress. Deputy Smith was dispatched to a rural residence regarding an unknown

person hanging around the residence. When Deputy Smith and another deputy arrived, Mr. Carter was sitting next to a building on the property. When the deputies shined their lights on Mr. Carter, he stood up and turned away. Deputy Smith testified that he questioned Mr. Carter, Mr. Carter appeared nervous, and out of concern for officer safety, Deputy Smith commenced a pat-down search of Mr. Carter for weapons. Deputy Smith testified he felt a hard, golf ball sized object in Mr. Carter's pocket. Deputy Smith stepped back from Mr. Carter and ordered him to empty his pocket. The object turned out to be methamphetamine.

Mr. Carter filed a motion to suppress the methamphetamine found on his person on the basis that the search of his person was in violation of his Fourth Amendment rights under the United States Constitution. I concluded that Deputy Smith was justified in the pat-down search under Terry v. Ohio, 392 U.S. 1 (1968), and that Deputy Smith was reasonable in believing the item felt might be a weapon. The Court of Appeals agreed that Deputy Smith was justified in the initial pat-down search, but found that Deputy Smith exceeded the proper bounds of the protective search when he asked Mr. Carter to empty his pockets. The Court reasoned that the item felt by the officer was obviously not a weapon, the Fourth Amendment requires that a pat-down be strictly limited to weapons, and that officers were not justified in expanding the search because there was an absence of probable cause.

i. State v. Herrera, No. 22,201, slip op. (N.M. App. July 16, 2001).

The Defendant, Juan Herrera, was charged with aggravated battery in an incident in which the victim James Ward was struck in the head and received permanent brain damage. The Defendant alleged that he acted in defense of his son. The jury convicted the Defendant and on appeal, Defendant argued that there was reversible error with respect to the jury instructions given. The Court of Appeals agreed with the Defendant on the instruction given on unlawfulness, reversed and remanded for a new trial.

- (3). Citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

As I understand this question, I am being asked for citations of published opinions I have written on federal or state constitutional issues and appellate citations to any such opinions. As noted under 15(1), I am a judge in a state trial court system that does not write published opinions at the trial court level. I am frequently called upon to rule on federal or state constitutional issues particularly in my criminal cases; however, my rulings, including any findings or conclusions, are most often stated orally on the record. The Strain case referenced above dealt with due process

claims, so I am enclosing copies of my letter ruling and judgment in addition to the Court of Appeals' opinion.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**Candidate for State Senate District 33. Lost in Republican primary in June of 1992.**

**New Mexico Juvenile Justice Advisory Committee, (1995 - present), appointed by the Governor.**

**New Mexico Drug Enforcement Advisory Committee, (1995 - 1996), appointed by the Governor.**

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

**I never clerked for a judge.**

2. whether you practiced alone, and if so, the addresses and dates;

**The entire time I was in private law practice I was associated with a law firm.**

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

**05/84 - 08/84: Summer Law Clerk  
08/85 - 03/86: Associate Attorney**

**Bracewell & Patterson, LLP  
2900 South Tower, 711 Louisiana  
Houston, TX 77002  
(713) 223-2900**

03/86 - 12/89: Associate attorney  
01/90 - 02/95: Partner attorney

Hinkle, Hensley, Shanor & Martin, LLP  
f/n/a Hinkle, Cox, Eaton, Coffield & Hensley  
400 N. Pennsylvania, Suite 700  
P. O. Box 10  
Roswell, NM 88201

02/95 - Present: District Judge, State of New Mexico  
Chaves County Courthouse  
Roswell, NM 88201

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1985 to 1986: During the approximate one year I was with Bracewell & Patterson, I practiced in the firm's commercial litigation section and my work involved representing banks and corporations in cases which I would generally characterize as contract cases.

1986 - 1995: During the 9 years I was with the Hinkle firm, I continued to practice in the area of commercial litigation but my litigation practice included more emphasis on oil and gas contract disputes such as disputes arising under oil and gas operating agreements and disputes arising under gas contracts. I also moved into the area of bankruptcy litigation initially representing oil and gas operating companies which were Chapter 11 debtors. My bankruptcy practice shifted to representation of creditors and Chapter 11 trustees in larger bankruptcy cases.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical former clients would include oil and gas companies and banks. In terms of specialization, the closest area of legal practice I specialized in was bankruptcy law; however, I never applied for any specialty designation in bankruptcy or any other specialized area. When I practiced bankruptcy law, most of my bankruptcy work was in larger bankruptcy cases representing trustees and creditors.



- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My court appearances as an attorney were in between occasional and frequently. A significant part of my civil litigation practice would be characterized as a motion practice with extensive work on discovery issues, taking depositions, and preparing and arguing summary judgment and other pre-trial motions. Most of the commercial cases I was involved in settled before trial. As for my bankruptcy work, a significant portion of my time was spent litigating in the United States Bankruptcy Court for the District of New Mexico.

2. What percentage of these appearances was in:

- |     |                         |   |      |
|-----|-------------------------|---|------|
| (a) | federal courts          | - | 45%; |
| (b) | state courts of record; | - | 45%  |
| (c) | other courts            | - | 10%. |

3. What percentage of your litigation was:

- (a) civil;  
(b) criminal.

When I was in private law practice, I did not practice any criminal law.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

During the ten years I was in private law practice, I would estimate that I was involved in fifteen trials that resulted in judgment (including summary judgment) and of those fifteen, three were tried to a jury. On the three-jury trials, I was associate counsel on all three. On the twelve that were bench trials, I was associate counsel on eight and lead counsel on four.

5. What percentage of these trials was:

- (a) jury;  
(b) non-jury.

During my time in private practice, I estimate 80% of the trials in which I was involved were bench trials and 20% jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Perez v. Koenig and Columbus Electric Cooperative, 6<sup>th</sup> Judicial District, County of Luna, State of New Mexico.

Thomas Roy Perez ("Perez") through his parents sued Defendants Leo and Mary Koenig ("Koenig") and Columbus Electric Cooperative ("CEC") for damages arising out of an incident where Perez lost his leg below the knee after having come into contact with a downed power line owned and controlled by CEC and located adjacent to a county road which ran through the Koenig Farm.

The trial court granted summary judgment in favor of CEC and Koenig and the Court of Appeals reversed as to both defendants. The Supreme Court of New Mexico in a published opinion reversed the Court of Appeals' decision as it related to Koenig but affirmed as it related to CEC. Koenig v. Perez, 104 N.M. 664, 726 P.2d 341 (1986). The case was remanded to the trial court for entry of judgment in favor of Koenig and for trial against CEC.

At the time of the accident, Perez and his friend Ernest Anselmi ("Anselmi") were farm laborers for Koenig. Anselmi was driving his pick up truck down a dirt road to the fields when he lost control of his truck and it struck a guy wire attached to an electric pole which caused the electric pole to snap and the power lines to come down. There was evidence in the record that CEC had received complaints from Koenig that the guy wire was located too close to the dirt road and there was evidence that the guy wire was not in compliance with the Rural Electric Administration safety code.

The Hinkle Firm was counsel for CEC. I did not become involved in the case until after the Supreme Court remanded the case for trial in 1986. I assisted the lead counsel in taking depositions, meeting with witnesses, general trial preparation including preparing pretrial motions and trial briefs and I assisted in the trial of the case. The case went to trial in 1987. New Mexico is a comparative fault state. The jury returned a verdict apportioning fault among CEC, Anselmi and Perez. To the best of my memory, the jury apportioned fault with 40% on CEC, 40% on Anselmi and 20% on Perez. After applying the comparative percentages to the amount found by the jury to be the total damages suffered by Perez, he ended up with an award in the amount of his past and future medical expenses.

The trial judge in this case was State District Judge Lee Vessley, Grant County Courthouse, Silver City, NM 88062 (505) 538-2975. The lead counsel for my client was Stuart D. Shanor, Esq., P.O. Box 10, Roswell, NM 88201 (505) 622-6510. Opposing counsel is now State District Judge Gary Jeffreys, Luna County Courthouse, #56, Deming, NM 88030 (505) 546-2344.

2. In re La Mesa Park Racing Corporation, United States Bankruptcy Court for the District of New Mexico, Case No. 11-87-02564 RS.

La Mesa Park Racing Corporation ("LMP") owned a horse racing track in Raton, New Mexico. Raton is a small city of approximately 25,000 people situated in Northern New Mexico just a few miles from the New Mexico/Colorado border. For years, LMP drew horsemen from Colorado, Texas and Oklahoma for the summer racing season. As a result of decreasing attendance and mismanagement, by 1987 LMP was financially insolvent and so at the end of 1987, LMP filed for chapter 11 bankruptcy protection. Because of mismanagement, the Bankruptcy Judge granted the major creditor's motion for appointment of a chapter 11 trustee. My former law partner, Stuart D. Shanor, was appointed trustee and I became his counsel in the case. After initial investigation, it became readily apparent that the only salvation for the racetrack was to sell it before the 1987 racing season. The poor financial condition of LMP and the lack of anyone willing to extend it credit ruled out any effective reorganization by LMP. Additionally, any sale needed to occur in about 90 days otherwise the 1988 racing season would be lost which would further decrease the prospects of horse racing ever occurring in Raton. The reorganization provisions of the bankruptcy code provide the debtor and other parties-in-interest 120 days to propose a reorganization plan and then there is additional time for hearings on the disclosure statement and plan of reorganization and so the normal time limits in the bankruptcy code were also posing a problem for LMP.

LMP was advertised for sale in the Wall Street Journal and the trustee and I did everything we could to market LMP. A local group of creditors and business people came forward with an offer to purchase the LMP assets out of bankruptcy. This was the only offer received by the trustee. I prepared and filed a motion to sell assets pursuant to 11 USC Section 363 which contains a provision that authorizes the bankruptcy court to approve a sale of assets free and clear of liens and encumbrances with any liens attaching to the sale proceeds for later determination as to priority of such liens.

The motion to sell assets had the practical effect of disposing of all the assets in the bankruptcy estate. There were junior lien holders and stockholders who objected to the motion on the grounds that the trustee was doing an end run around the statutorily mandated provisions of the bankruptcy code. The trustee's position was that the local group who wanted to buy the assets of LMP was the only offer the trustee had received after advertising nationally, that the financial condition of LMP was so bad it could never reorganize on its own and that if the sale was not approved, LMP would not be able to have a 1988 racing season. At a hearing attended by a large number of Raton residents, the bankruptcy judge approved the trustee's motion to sell assets. All of the assets of LMP were sold and LMP was converted to chapter 7 for final liquidation.

The Bankruptcy Judge was the Hon. Stewart Rose who retired several years ago and moved out of state. The trustee was my former law partner, Stuart D. Shanor, P.O. Box 10, Roswell, NM 88201 (505) 622-6510. The main attorney in opposition was Doug Francis, 40 1<sup>st</sup> Plaza, NW, #620, Albuquerque, NM 87102-5801 (505) 242-6770.

3. Henry McDonald d/b/a McDonald Trucking v. United Salt Corporation, Fifth Judicial District, County of Eddy, State of New Mexico, Case No. CV-94-77.

In Eddy County near Carlsbad there are large deposits of salt both above and below ground. United Salt Corporation ("USC") operated a large open pit salt mine where salt was harvested and sold in blocks, pellets and in bulk for deicing of roadways in the winter. USC contracted with Henry McDonald ("McDonald") to haul salt from the mine to the salt processing plant. USC is headquartered in Houston, Texas. Without USC's knowledge or approval, the plant foreman made an informal arrangement with McDonald to store salt blocks in McDonald's warehouses. Management in Houston received complaints about large quantities of salt being removed on McDonald's trucks so USC hired a private investigator to conduct an investigation. The investigation determined that large quantities of salt were being removed from the plant and taken to McDonald's warehouse without USC's knowledge or

approval. USC terminated McDonald's hauling contract and the missing salt was reported to the sheriff as stolen.

In March of 1994, McDonald filed a breach of contract suit and asserted a number of tort claims including defamation of character, malicious abuse of process and intentional infliction of emotional distress. The Hinkle Firm was hired by USC as defense counsel and I was associate counsel on the case. I conducted most of the discovery including document productions and depositions in both New Mexico and Texas. I also handled the pretrial motions including the preparation of a partial summary judgment motion and brief on all the tort claims. Discovery showed that the real culprit in the case was USC's plant foreman who was doing a lot of things without USC knowledge or approval. USC terminated the plant foreman. I viewed the case as a breach of contract case that had a good chance of settling but for all the tort claims and the plaintiff's view that he stood a good chance of convincing a jury that he had been wronged by USC. I prepared and argued the summary judgment motion and brief on the tort claims and the trial judge ruled in favor of USC. All that was left in the lawsuit for trial was the breach of contract claims and the case settled several days before trial in February of 1995.

The trial judge in this case was State District Judge James L. Shuler, P. O. Box 1626, Carlsbad, NM 88220 (505) 887-7107. The senior attorney on the case for USC was my former law partner Stuart D. Shanor, P.O. Box 10, Roswell, NM 88201 (505) 622-6510. Opposing counsel in the case was Michael T. Newell, P.O. Box 1599, Lovington, NM 88260 (505) 396-5303.

4. In re Alan J. Antweil and Mary Frances Antweil, Hobbs Pipe & Supply, a general partnership, Morris R. Antweil, Debtors, United States Bankruptcy Court for the District of New Mexico, Consolidated Case No. 11-86-254 MA.

Alan Antweil and his father, Morris, owned and operated a number of oil and gas producing properties in Southeastern New Mexico and West Texas. During the 1970's when oil and gas prices were high and the oil and gas industry was booming, the Antweils made a lot of money and they expanded their business empire by acquiring various real estate interests in New Mexico and Texas and acquiring luxury items such as art and race horses. By the mid 1980's when oil and gas prices cratered and the boom times ended, the Antweils began experiencing severe financial problems. In February of 1986, the above named debtors filed chapter 11 bankruptcy petition and their bankruptcy estates were eventually consolidated (Morris Antweil died shortly after the petitions were filed). During the years preceding the filing of bankruptcy, the Antweils sold oil and gas produced from Antweil operated wells; however, instead of paying the working interest and royalty owners who had invested in the Antweil operated

properties the monies that were due and owing to the working and royalty interest owners, the Antweils applied the monies for their own personal uses. Because of the widespread fraud and misappropriation of millions of dollars of other peoples money, the bankruptcy court appointed an oil and gas accountant by the name of Elliott Johnson as the chapter 11 trustee. Johnson hired the Hinkle Firm as counsel for the trustee. The Antweil bankruptcy was a large estate and I was one of three lawyers who worked on this bankruptcy. I was second in seniority.

The trustee proposed and the bankruptcy court approved a liquidating plan of reorganization. This strategy was utilized instead of conversion to chapter 7 because the bankruptcy estate had significant net operating losses from previous years that, according to the accountants, would not be available in a chapter 7 proceeding. The net operating losses in a Chapter 11 case would be available to offset the gains from the sale of the various oil and gas properties owned by the Antweils. The Antweil bankruptcy began in 1986 and was concluded in 1996.

5. Antweil Bankruptcy: Motion to Assume or Reject Executory Contracts.

One of the many matters litigated concerned whether an oil and gas lease was an executory contract under Section 365 of the Bankruptcy Code. A group of royalty owners (Royalty Owners) had executed oil and gas leases with the Antweils whereby the Royalty Owners were lessors and the Antweils were lessee under the oil and gas leases. The Antweils drilled various wells pursuant to the oil and gas leases and the Antweils were obligated under the oil and gas leases to pay the Royalty Owners their royalty payments based on the oil and gas produced. At the time the Antweils filed bankruptcy, they owed the Royalty Owners significant sums in unpaid royalty payments. The Royalty Owners, as the lessors under the various oil and gas leases they had with the Antweils, filed a motion with the bankruptcy court seeking a determination that the oil and gas leases in question were executory contracts under Section 365 and that the trustee would have to assume or reject the oil and gas leases in question. If a contract is an executory contract under the Bankruptcy Code and the trustee assumes the contract, then pre-petition defaults must be cured. This would mean that if the oil and gas leases in question were executory contracts and the trustee had to assume the contracts, then the trustee would have to cure defaults which would mean that the Royalty Owners would be paid in full all their unpaid royalty payments in contrast to other creditors who would be receiving pennies on the dollar. If the trustee rejected the oil and gas leases, then the leases would revert back to the Royalty Owners as the lessors and there would be a forfeiture of the bankruptcy estate's interest in the oil and gas leases in question. New Mexico state law has long held that an oil and gas lease constitutes an interest in real property. The bankruptcy court, following state

law, ruled in favor of the trustee and held that the oil and gas leases in question were not executory contracts that had to be assumed or rejected. In re Antweil, 97 B.R. 65 (1989). I was the lead attorney on this particular litigated matter.

The Bankruptcy Judge on the case was the Hon. Mark B. McFeeley, P. O. Box 546, Albuquerque, NM 87103 (505) 348-2525. The attorney in the Hinkle firm who assisted me was Gregory J. Nibert, P.O. Box 10, Roswell, NM 88201 (505) 622-6510. Opposing counsel, to the best of my memory, was named Richard Gose or Goss. I could not find any current listing for this attorney in the attorney's directory.

6. William Barnhill v. Elliott Johnson, Trustee.

As counsel for the trustee in the Antweil Bankruptcy, my co-counsel and I were required to file numerous lawsuits (adversary proceedings) in the bankruptcy court to recover preferential transfers pursuant to Section 547 of the Bankruptcy Code. Section 547(b) allows a trustee to recover transfers of the debtor's property made on or within 90 days of the bankruptcy filing. Most of the preference lawsuits were settled; however, the preference suit against Mr. Barnhill went all the way to the United States Supreme Court. Barnhill was owed a large sum of money by the Antweils and he sued the Antweils in state court. A settlement check was delivered to Barnhill's attorney on November 18, 1985, was dated November 19, 1985 and was honored by the drawee bank on November 20, 1985. It just so happened that the 90<sup>th</sup> day before the bankruptcy petition was filed was November 20, 1985. Thus, the crucial issue in Barnhill was whether the transfer by the Antweils occurred when the check was delivered or when the check was honored by the drawee bank. The Bankruptcy Court ruled against the trustee and in favor of Barnhill, Johnson v. Barnhill, 97 B.R. 69 (Bankr. D.N.M. 1989) and this decision was affirmed by the District Court in Johnson v. Barnhill, 111 B.R. 337 (D.N.M. 1990). The Tenth Circuit Court of Appeals reversed, Johnson v. Barnhill, 931 F.2d 689 (10<sup>th</sup> Cir. 1991), holding that the transfer occurred on the date the check was honored by the drawee bank. Certiorari was granted by the United States Supreme Court to resolve splits among the Circuits on this issue. The Supreme Court affirmed the Tenth Circuit and ruled in favor of the trustee that the date the check is honored by the drawee bank is the date of delivery for purposes of Section 547(b) of the Bankruptcy Code. There was some competition among the lawyers in my former firm as to who would get to argue this case before the Supreme Court. The conflict was resolved by the senior bankruptcy attorney being the one to argue the case. Consequently, I did not get to argue the case; however, I was one of the lawyers who helped write the briefs.

The Bankruptcy Judge was the Hon. Mark B. McFeeley, P. O. Box 546, Albuquerque, NM 87103. Opposing counsel was William J. Arland, III, P.O. Box 1888, Albuquerque, NM 87103 (505) 765-5900. My former law partner Nancy S. Cusack is the attorney who argued the case before the Supreme Court and my former law partner Drew Cloutier is who I worked with in preparing the briefs. P.O. Box 10, Roswell, NM 88201 (505) 622-6510.

7. In re Ezequiel E. Hernandez and Irmv Fave Hernandez, United States Bankruptcy Court for the District of New Mexico, Case No. 11-92-12396 MR.

Zeke Hernandez is a bail bondsman and rental property owner and manager. The bail bond business and the rental property business were all done together as a sole proprietorship. In 1991, Mr. Hernandez had a large bail bond forfeited by the state district court. The bond should not have been forfeited based on New Mexico law; however, the attorney for Mr. Hernandez committed legal malpractice. Mr. Hernandez retained William E. Snead of Albuquerque to represent him in the legal malpractice claim. As a result of the bond forfeiture, Mr. Hernandez could not make his note payments on his rental properties and he experienced other cash flow problems caused by the bond forfeiture. The bank instituted foreclosure proceedings against Mr. Hernandez. Even though Mr. Hernandez had a pending malpractice suit against his former attorney, the bank was not willing to wait for its money.

Mr. Hernandez and Mr. Snead contacted me about handling a chapter 11 reorganization case for Mr. Hernandez since he had a lot of equity in his rental properties and wanted to keep his bail bond business going. I attempted to negotiate a settlement with the bank but that was unsuccessful. I filed a chapter 11 bankruptcy petition on behalf of Mr. and Mrs. Hernandez and obtained court confirmation of the plan of reorganization of Mr. Hernandez. Mr. Snead negotiated a successful settlement of the malpractice claim and the proceeds from this settlement funded the bankruptcy reorganization. The bank's secured claim was paid in full and the unsecured portion of the bank and other creditor claims were paid at the rate of approximately seventy-five cents on the dollar.

The bankruptcy judge was the Hon. Mark B. McFeeley, P.O. Box 546, Albuquerque, NM 87103 (505) 348-2525. The bank's counsel was John M. Caraway, P.O. Box 1718, Carlsbad, NM 88220 (505) 885-4171. The malpractice attorney for Mr. Hernandez was William E. Snead, 201 12<sup>th</sup> St., Albuquerque, NM 87102 (505) 842-8177 and my co-counsel at the Hinkle Firm was Andrew J. Cloutier, P.O. Box 10, Roswell, NM 88201 (505) 622-6510.



8. The Citizens Bank of Clovis v. Malcolm G. Garrett as Personal Representative of the Estates of John Garrett, Jr. and Irene Garrett, 9<sup>th</sup> Judicial District, State of New Mexico, County of Curry.
9. The Citizens Bank of Clovis v. Malcolm G. Garrett and Donna Jean Garrett, 10<sup>th</sup> Judicial District, State of New Mexico, County of Quay.

The Garrett/Citizens Bank litigation involved three district court cases filed in Curry and Quay Counties, New Mexico in late 1989 or early 1990. The three cases were consolidated and the last appellate opinion on the consolidated case was issued by the New Mexico Court of Appeals on February 17, 2000, which concluded the case. The two primary cases were the cases referenced above in paragraph numbers 8 and 9.

The Hinkle Firm represented the Citizens Bank of Clovis (Citizens). I became involved in the case in 1991 and worked on the litigation until I became a judge in February of 1995. This litigation included three different district court proceedings and the New Mexico Supreme Court or Court of Appeals issued five separate appellate opinions, all of which were unreported. Harold Hensley\* was the lead attorney for Citizens at the trial. I assisted Harold in trying the case. I took most of the depositions and argued most of the motions in district court. I also argued twice before the New Mexico Supreme Court. Given the complexity and scope of this litigation, another Hinkle attorney, Rebecca Johnson, worked on this case from beginning to end and she handled most of the motions and briefing although I did assist her on some of the motions and briefs. During the course of this extensive state court litigation, Malcolm Garrett, one of the adverse parties, filed for bankruptcy and I took the lead in getting the automatic stay lifted so the state court litigation could proceed.

John Garrett, Jr. was a successful Clovis, New Mexico businessman. He died in 1978 and his wife, Irene, died in 1983. Their wills devised an undivided 25% interest in their estates to each of their four children: Malcolm Garrett, Michael Garrett, Gene Garrett and Annette Garrett Ellison. Malcolm was the personal representative of both estates (the "Estates"). The assets of the Estates included the majority of the stock in Curry County Grain Company ("CCGC") and a valuable 8500 acre farm near Clovis.

Malcolm was also president of CCGC. When John Garrett was alive, CCGC was a flourishing business. Under Malcolm's leadership, CCGC piled up debt and by 1986, it owed Citizens approximately \$12.7 million, approximately \$4.0 million of which was over Citizens legal lending limit. Around the same time, Citizens learned that Malcolm had misapplied \$5.0 million in CCGC revenues (\$1.0 million of which Malcolm withdrew for his personal use). Citizens

threatened foreclosure unless Malcolm restructured and reduced CCGC's debt to within Citizens' legal lending limits.

In 1986, the debts of CCGC were restructured by having various Garrett entities roll over existing loans and promissory notes into new notes that included new money borrowed from Citizens. As personal representative, Malcolm borrowed in excess of \$1.1 million against the Estates with the loan proceeds being applied to the CCGC debt. Malcolm and his twin brother Michael borrowed and contributed separate amounts for the purpose of reducing CCGC's debt. The 1986 loan restructuring reduced CCGC's debt to Citizens from \$12.7 million to \$8.5 million to bring CCGC's debt to within Citizens legal lending limit. Gene Garrett and Annette Garrett Ellison were never informed about the loan restructuring and never consented to Malcolm pledging the assets of the Estates to Citizens. Further, Annette had a history of mental illness and there was ultimately a court finding that Annette's mental condition precluded her from understanding or comprehending the 1986 loan restructuring.

CCGC and Malcolm were not able to pay their loans to Citizens, so Citizens instituted foreclosure proceedings against the Estate's farm, against Garrett Corporation and against Malcolm individually. The three separate foreclosure cases were eventually consolidated. Malcolm counter-claimed in his various capacities. Citizens eventually prevailed and obtained ownership of CCGC and all other assets except the district court voided Citizens mortgage as to Gene and Annette's interest in the estate's farm based on the findings that Gene and Annette had no knowledge of nor did they consent to the 1986 loan restructuring. Citizens argued that Malcolm, as personal representative of the estates, had authority to bind the Estates but that argument was not successful at the district court level or at the appellate level.

The original trial judge in the case was Judge Stanley Frost, who in 1991 was elevated to the New Mexico Supreme Court. Justice Frost died of cancer in 1998 or 1999. The consolidated Garrett cases were reassigned to Judge Steve Herrera who was tragically killed in a car crash in 1997.

Counsel in the Hinkle Firm with whom I worked were Harold Hensley and Rebecca Johnson, P.O. Box 10, Roswell, New Mexico 88201 (505) 622-6510. Opposing counsel for Malcolm Garrett was Barry Crutchfield, 113 E. Washington, Lovington, NM 88260 (505) 396-4927 and opposing counsel for Annette Ellison was J.W. Neal, P. O. Box 278, Hobbs, NM 88241-0278 (505) 397-3614.

10. Lea County Electric Cooperative v. Texaco; New Mexico Public Utilities Commission (PUC) Case No. 2489:

The Hinkle Firm was counsel for Texaco and I worked extensively on this case. Buckeye, New Mexico is the location of a little store which sits atop the vacuum field, which is one of the most prolific oil and gas fields in New Mexico. Texaco is one of the major oil and gas companies which has significant operations in the vacuum field. Texaco operated several oil and gas units which had been unitized by order of the New Mexico Oil Conservation Division ("OCD") so that Texaco could drill water injection wells and inject large quantities of water underground into oil and gas reservoirs thereby pushing the hydrocarbons to well sites where the hydrocarbons would be pumped to the ground. These units created by the OCD would involve a large number of wells including water injection wells and would cover a large area at the particular depth where the oil and gas reservoir was located. Every well in the unit had equipment operated by electricity. Texaco had constructed a system of electric utility poles with electric distribution wires that went from well site to well site. Texaco was purchasing electricity from the utility Southwestern Public Service Co. (SPS), which was the low cost electric producer in the area. Lea County Electric Cooperative, Inc. ("LCEC") is a customer rural electrical cooperative which, like SPS, services customers in and around Buckeye in territory authorized by the PUC. The surface area of the Texaco water flood units extended into service territory of both SPS and LCEC, with most of the area of Texaco's water-flood units situated in LCEC territory. Texaco, however, was purchasing all of the electricity it used for the water flood units from SPS. Texaco had a central meter location where SPS supplied all the electricity for the operation of the water flood units. The central meter location was in SPS's territorial location, but then the Texaco unit electrical distribution system transmitted electricity on electrical wires to numerous wells located on LCEC's service territory.

LCEC brought suit against Texaco for declaratory and injunctive relief, seeking a declaration that Texaco was a public utility for operating its unit electrical distribution system and seeking an injunction enjoining Texaco from operating in LCEC's exclusive territory. The potential implications for this lawsuit were far reaching. Texaco, and other oil companies who operated water flood units, did not consider themselves public utilities and did not want to be subject to state regulatory authorities for public utilities. This case involved extensive pre-trial motions and discovery. It settled before going to hearing before the Public Utility Commission.

The Hearing Examiner was R. Michael Barlow, 224 E. Palace Ave., Santa Fe, NM 87501 (505) 827-6940. Counsel for the Public Utility Commission was

Stacey J. Goodwin, 300 Galisteo St. #205, Santa Fe, NM 87501 (505) 982-4147.  
Counsel for LCEC was C. Gene Samberson, P.O. Box 1599, Lovington, NM  
88260 (505) 396-5303.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. Take-or-pay gas contract litigation:

In the 1970's when the price of natural gas was regulated, gas pipeline companies would enter into long term gas contracts with producers to take certain quantities of gas at certain prices and if the gas was not needed by the pipeline companies, they would pay for the natural gas anyway and the gas contracts would contain a "make-up" provision where the pipeline companies would be able to obtain or make up natural gas they previously paid for, thus the name take-or-pay gas contracts. The pipeline companies in turn would enter into long term gas contracts with utilities to deliver the natural gas which the pipeline companies had contractually obligated themselves to buy from producers. In the mid 1980's, the Federal Energy Regulatory Commission deregulated the natural gas industry at the wholesale level and so utility companies could purchase natural gas on the open market and were no longer required to purchase gas from the pipeline companies. The pipeline companies in turn notified producers that the pipeline companies would no longer take-or-pay for gas quantities for which the pipeline companies had contracted. The producers in turn filed breach of contract actions in various state and federal courts. My former law firm (the Hinkle Firm) represented Transwestern Pipeline Company ("Transwestern") in a number of these breach of contract cases and I worked extensively on two cases, *Depco, Inc. v. Transwestern*, Fifth Judicial District Court, State of New Mexico Case No. 87-603, and *Nicor Exploration Co. v. Transwestern*, Fifth Judicial District Court, State of New Mexico Case No. CV-89-149. These cases involved numerous contract claims and defenses including breach of contract, anticipatory breach, third party beneficiary, force majeure, impossibility of performance, failure of conditions precedent, laches, waiver and estoppel. These two cases involved extensive motion practice and since both parties had extensive documents, the cases were document intensive. The cases also required the use of oil and gas experts to analyze future productivity of various oil and gas wells and reservoirs. Both cases were litigated for about 18 months and then they settled.

2. Civil Mediation:

From the time I became a judge in February of 1995 to the present, I have mediated civil cases referred to me from other judges on a volunteer basis. I estimate that in the

6.5 years I have been a trial judge, I have mediated 40 cases and I estimate that 75% of the cases settled during mediation. I have settled small commercial cases under \$20,000 in controversy to wrongful death cases where the damages exceed several million dollars. One of the most recent cases I settled involved a collision between an oil field service truck and a passenger car in which driver and his mother were killed. The damages were astronomical; however the real issue in the case involved which driver was at fault. After a total of two days of mediation, the case settled. I was particularly pleased that this case settled because there is a 15 year old girl who lost her mother and brother in the accident and this girl will have her college paid for and will have financial assistance to help her throughout her life.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am a salaried employee of the State of New Mexico and I own 200 shares of IBM stock which in 2000 paid dividends of \$102. I also receive a small amount of interest income relating to two personal checking accounts. At present, I have no other sources of income. As for any future income, I am vested in a retirement account maintained by the State of New Mexico Public Employees Retirement Association ("PERA") in connection with my service as a State of New Mexico judge. If I am confirmed as a federal judge, then I have the option of rolling over the PERA retirement funds into an individual retirement account or allowing the PERA funds to remain with PERA until I turn 65 years of age, at which time I could start drawing a pension.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would utilize a procedure to resolve potential conflicts of interest similar to the procedure I use as a sitting New Mexico judge. First, there are a few attorneys with whom I have maintained a close personal friendship or who have provided legal advice for me and I would not hear any cases where these attorneys are counsel of record. If a case was assigned to me involving one of these attorneys, I would enter an order of recusal. Second, I would not hear any cases in which one of the parties has some association with a member of my family. Third, I will adhere to the guidelines for the code of judicial conduct and recuse myself in any proceeding in which my impartiality might reasonably be questioned.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Financial Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have been on the ballot for elective office on two occasions. First, in the spring of 1992, I declared my candidacy for election to the New Mexico State Senate as a Republican in Senate District 33. I had a Republican opponent in the primary which was held in June of 1992. I lost the primary election. Second, I was appointed district judge by the Governor of New Mexico in February of 1995. Under New Mexico law, I was required to run in the next election for the position of district judge which was in November of 1996. I ran as a Republican for district judge in the Fifth Judicial District and was unopposed in the primary and in the general election. I won a six year term which began January 1, 1997 and extends until December 31, 2002.

As for other political activities, before becoming a judge in February 1995, I was very involved in the Republican Party of New Mexico and my local party, the Chaves County Republican Party.

From 1987 until I announced my candidacy for State Senate in 1992, I was active in the Chaves County Republican Party serving as precinct chairman, vice-chairman of the county party and chairman of the county party. The Chaves County Republican Party actively recruits candidates for all county-wide offices such as state legislators, county commissioners and county offices (treasurer, assessor and county clerk) and for judicial positions. During my years of involvement with the Chaves County Republican Party, I worked on numerous campaigns in Chaves County in addition to doing volunteer work for congressional, gubernatorial and presidential campaigns in Chaves County.

After I lost the State Senate primary in 1992, I became involved in the Republican Party of New Mexico. I held the party office of Second Congressional District Vice-Chairman and then in 1993, due to a resignation, I became First Vice-Chairman of the

state party and held that position until I resigned in January of 1995 when I learned that the Governor of New Mexico was appointing me as a district judge. During my association with the Republican Party of New Mexico, I did not work on any particular campaign; however, I was involved in operations of the Republican party of New Mexico and was involved in assisting and working with legislative, congressional, and gubernatorial campaigns.



AO-10 (w)  
Rev. 1/2000FINANCIAL DISCLOSURE REPORT  
Nomination ReportReport required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. <b>Person Reporting</b> (Last name, first, middle initial) Johnson, William P.	2. <b>Court or Organization</b> District Court - New Mexico	3. <b>Date of Report</b> 08/03/2001
4. <b>Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee	5. <b>Report Type (check type)</b> X Nomination, Date 08/02/2001 Initial _____ Annual _____ Final _____	6. <b>Reporting Period</b> 01/01/2000 to 07/31/2001
7. <b>Chambers or Office Address</b> Chaves County Courthouse P.O. Box 1776 Roswell, NM 88202-1776	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	

*IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.*

## I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 State District Judge	Fifth Judicial District, State of New Mexico
2 Vice-Chairman	Governor's Juvenile Justice Advisory Committee
Chairman	Board of Trustees (Directors), Camp Sierra Blanca, a non-profit entity

## II. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2000-01	State Employees Pension Fund; pension upon retirement, no control
2	
3	

## III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	State of New Mexico, District Judge Salary	79,174.83
2 2000	State of New Mexico, District Judge Salary	79,463.23
6/30/01	State of New Mexico, District Judge Salary	40,796.08
4 2000	State of New Mexico	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Johnson, William P.	08/03/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Include those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	<input type="checkbox"/> NONE	EXEMPT
2		
3		
4		
5		
6		
7		

**V. GIFTS**

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	<input type="checkbox"/> NONE	EXEMPT	
2			
3			

**VI. LIABILITIES**

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	G.E. Capital Mortgage Services, Inc.	Mortgage on rental house, Albuquerque, NM	M
2			
3			
4			
5			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Johnson, William P.		Date of Report 08/02/2001	
<b>VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>					
A. Description of Assets, (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month: Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
1 Rental House, Albuquerque, NM	D	Rent	M	Q	EXEMPT
2 Brokerage Account					EXEMPT
3 IBM Common Stock	A	Dividend	K	T	EXEMPT
4 Merrill Lynch Banking Advantage	A	Interest	J	T	EXEMPT
5 Merrill Lynch IRA					EXEMPT
6 Merrill Lynch Bank USA	B	None	J	T	EXEMPT
7 Amazon Inc. common stock		None	J	T	EXEMPT
8 AOL Time Warner common stock		None	K	T	EXEMPT
9 Apache Corp. common stock	A	Dividend	J	T	EXEMPT
10 Ascential Corp. common stock		None	J	T	EXEMPT
11 AT&T Wireless common stock		None	J	T	EXEMPT
12 At Home (ATHM) common stock		None	J	T	EXEMPT
13 AT&T common stock	A	Dividend	J	T	EXEMPT
14 Atmel Corp. common stock		None	J	T	EXEMPT
15 Avaya Inc. common stock		None	J	T	EXEMPT
16 Biogen Inc. common stock		None	J	T	EXEMPT
17 Caldera International Inc. common stock		None	J	T	EXEMPT
1 Val Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Johnson, William P.		Date of Report 08/03/2001	
<b>VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  Place "00" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month- Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
18 CISCO Inc. common stock		None	J	T	EXEMPT
19 Dell Corp. common stock		None	J	T	EXEMPT
20 EMC Corp. common stock		None	J	T	EXEMPT
21 E Trade Inc. common stock		None	J	T	EXEMPT
22 LM Ericsson Tel. American Depository Receipt		None	J	T	EXEMPT
23 Gateway Inc. common stock		None	J	T	EXEMPT
24 Intel Corp. common stock	A	Dividend	J	T	EXEMPT
25 Loral (LOR) common stock		None	J	T	EXEMPT
26 Lucent Inc. common stock	A	Dividend	J	T	EXEMPT
27 McData Corp. common stock		None	J	T	EXEMPT
28 Merrill Lynch common stock	A	Dividend	J	T	EXEMPT
29 Microsoft Corp. common stock		None	J	T	EXEMPT
30 Motorola Inc. common stock	A	Dividend	J	T	EXEMPT
31 Network Assoc. common stock		None	J	T	EXEMPT
32 Nokia Corp. American Depository Receipt	A	Dividend	J	T	EXEMPT
33 Nortel Corp.	A	Dividend	J	T	EXEMPT
34 Novell Inc. common stock		None	J	T	EXEMPT
1. Val/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001 or more					
2. Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000 S=\$50,000,001 or more					
3. Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Johnson, William P.		Date of Report 08/03/2001	
<b>VII. Page 3 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  Place "OO" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month: Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
35 Oracle Corp. common stock		None	J	T	EXEMPT
36 Pacific Cent. (PCWKP) foreign stock		None	J	T	EXEMPT
37 Phillips Petr. common stock	A	Dividend	J	T	EXEMPT
38 Safelink Corp. common stock		None	J	T	EXEMPT
39 Sun Microsystems com. stock		None	J	T	EXEMPT
40 Teradyne Inc. common stock		None	J	T	EXEMPT
41 Terayon Comm. common stock		None	J	T	EXEMPT
42 Walmart Inc. common stock	A	Dividend	J	T	EXEMPT
43 Williams Cos. (WGS) com. stock		None	J	T	EXEMPT
44 Williams Comp. common stock	A	Dividend	J	T	EXEMPT
45 XYBR Corp. common stock		None	J	T	EXEMPT
46 Nuveen Ritten. Growth Fund	A	Dividend	J	T	EXEMPT
47 Custodial Account #1					EXEMPT
48 American Century Select Fund	A	Dividend	J	T	EXEMPT
49 Custodial Account #2					EXEMPT
50 American Century Select Fund	A	Dividend	J	T	EXEMPT
51 Custodial Account #3					EXEMPT
1 Net/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Johnson, William P.	08/03/2001

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

The liability referenced in Part VI was paid in full and asset #1 in Part VII was disposed of in June of 2000 when the rental house in Albuquerque was sold.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Johnson, William P.	08/03/2001

## SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Vice-Chairman	Program Development Cmte., Associated Marine Institutes, a non-profit entity
5	Custodian	Two college savings accounts

## PART 3. NON-INVESTMENT INCOME (cont'd.)

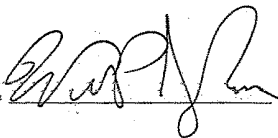
Line	Date	Source and Type	Gross Income
5	6/30/01	State of New Mexico	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Johnson, William P.	08/03/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date 8/6/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544



**FINANCIAL STATEMENT  
NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

As of 6/20/01

ASSETS		LIABILITIES	
Cash on hand and in banks	\$ 2,623.00	Notes payable to banks - secured	\$ 14,000.00
U. S. Government securities-add schedule	0	Notes payable to banks-unsecured	0
Listed securities - add schedule	0	Notes payable to relatives	0
Unlisted securities - add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	0
Doubtful	0	Real estate mortgages payable - add schedule (see below)	0
Real estate owned - add schedule	\$112,500.00	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts - itemize:	
Autos and other personal property	\$ 20,000.00	Personal residence mortgage	\$ 78,858.00
Cash value - life insurance	0	Home Equity Line/Credit Loan	\$ 9,566.00
Other assets itemize: See schedule	\$157,005.00		
		Total liabilities	\$ 108,424.00
		Net Worth	\$ 269,204.00
Total Assets	\$377,628.00	Total Liabilities and net worth	\$ 377,628.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule) 1998 Ford Expedition pledged to secure car loan. Personal residence is pledged to secure mortgage debt and home equity line of credit.	
On leases or contracts	0	Are you defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0		
Other special debt	0		

## SCHEDULE

Real Estate Owned:

Personal Residence: Roswell, NM

Appraised value	\$ 105,000.00
1 week floating time share, Paradise Village & Spa, Puerto Vallarta, Mexico	5,000.00
Approximately 2 acres of undeveloped land in Mora, Mora County, NM	2,500.00
<b>Total</b>	<b>\$ 112,500.00</b>

Other Assets:

Individual Retirement Account - Merrill Lynch	\$ 124,146.00
Cash Management Account - Merrill Lynch (200 shares IBM stock and \$10,241.00 cash)	32,859.00
New Mexico Public Employees Retirement Assoc. (Loretta C. Johnson)	55,113.00
New Mexico Public Employees Retirement Assoc. (William P. Johnson)	27,000.00
<b>Total</b>	<b>\$ 239,118.00</b>

Liabilities:

Pioneer Savings & Loan - personal residence mortgage	\$ 78,858.00
home equity line of credit loan	9,566.00
USAA Savings & Loan - car loan	<u>14,000.00</u>
<b>Total</b>	<b>\$ 102,424.00</b>

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In 1988, I served as chairman of Law Day activities for the Chaves County Bar Association. I organized panels consisting of attorneys and judges to make presentations to students at the local high schools. I also coordinated attorney/judge panel discussions for the local senior citizens center and panel discussions to appear on local radio talk shows.

In 1988, I served as the court appointed guardian ad litem for an abused and neglected child in a children's court case. Since I was a commercial litigator in a large civil law firm which typically represented corporate clients, I was accustomed to both sides in a commercial dispute having capable, well prepared lawyers. I was appalled at what I saw in Children's Court in terms of inadequate representation and advocacy for abused and neglected children. I became one of the founding board members of the Chaves County CASA Program. CASA stands for court appointed special advocate and CASA volunteers are people from the community who, after going through training, are assigned to an abuse and neglect case and advocate for what is in the best interest of the child. The CASA volunteer serves as the eyes and ears for the trial judge. Pursuant to New Mexico court rules, the CASA volunteer investigates and speaks with all interested parties and then prepares a written report to the Children's Court Judge with copies to all parties. CASA volunteers advocate for the child and help prevent abused and neglected children from falling through the cracks of an overburdened child welfare system. As previously noted, I was one of the founding board members of the Chaves County CASA Program. I spent six years on the CASA Board and served as Board Chairman and Vice Chairman. I also assisted CASA in fund raising activities as a board member, including grant applications to foundations. While I never kept track of the hours I devoted to CASA, the time spent over the 6 years I was on the CASA board was significant.

When I became a district judge in February of 1995, I started hearing juvenile delinquency cases as part of my trial docket. After learning something about the juvenile justice system in New Mexico, I came to the conclusion that the State of New Mexico, like other states, could do a lot more to help at risk youth.

In 1995, I had the opportunity to go to Florida, along with members of the Executive Branch and a number of Legislators to see various juvenile programs which were considered to be very successful in rehabilitating delinquent youth. As a result of the

Florida trip, I was one of a number of individuals who advocated for the creation of an environmental work camp for delinquent male youth. In the 1996 Legislative Session, the Governor's administration proposed, and the Legislature authorized, the establishment of an environmental work camp and, as a result, Camp Sierra Blanca, a non-profit entity, was established in August of 1997. I was recruited to be chairman of the board of trustees and am proud to say that four years later, Camp Sierra Blanca has turned out to be one of the premiere juvenile programs in New Mexico and, in my opinion, in the entire country.

I have also worked at the local level in assisting units of local government in obtaining federal grant funding for the Chaves County and the City of Roswell to initiate and develop a continuum of services for troubled youth with the goal of reaching troubled youth before they enter the juvenile justice system. While I am a firm believer that juveniles must be held accountable for their actions, I also believe that resources need to be allocated towards developing effective programming to reach troubled youth before they start committing serious crimes that will cause them to enter the juvenile justice system and, in many instances, graduate into the adult criminal justice system.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I am not currently a member of any organization which discriminates on the basis of race, sex or religion. To the best of my knowledge, I have not belonged to organizations which discriminate on the basis of race, sex or religion with the following possible exceptions:

First, I was very active in the Boy Scouts of America growing up becoming an Eagle Scout at age 13 and staying involved with scouting through the summer of 1979 when I worked as a ranger at the Philmont Scout Ranch in Cimarron, New Mexico. With the exception of the Explorer Scout program which allows females, the Boy Scouts do not allow females to join just as the Girl Scouts do not allow males to join.

Second, I am a graduate of the Virginia Military Institute. During the time I was at VMI (8/77 - 5/81), VMI had a male only admissions policy which remained in effect until the United States Supreme Court ruled that VMI, as a state supported public college, must admit women. VMI now has female members of the Corp of Cadets.

Third, immediately following my graduation from VMI in May of 1981, I was asked to join the VMI alumni chapter of the Kappa Alpha fraternity. Other than the initiation

ceremony of the Kappa Alpha fraternity in May of 1981, I have never attended another Kappa Alpha event and I do not know if I am currently on the membership rolls of Kappa Alpha and to the best of the knowledge I have not paid any kind of membership fee to Kappa Alpha since May of 1981.

Fourth, in the spring of 1984 when I was a second year law student at Washington and Lee University in Lexington, VA, I was one of three students involved in planning the spring party for my law school class. We started looking for a good location to host our law school class party. We came across the local Moose Lodge and made inquiry if we could rent out the Moose Lodge. We were told that we had to join the Moose Lodge in order to use the facility for our class party. Three of us filled out applications. After we filled out our applications and joined the Moose Lodge, some of the members suggested to us that certain members of our law school class might now feel welcome at a party held at the Moose Lodge. At first we did not understand the comments and then we interpreted them to mean that minority members of our law school class might not be welcome at the Moose Lodge. The following day the three of us resigned our membership. My two law school classmates and I were members of the local Moose Lodge in Lexington, VA for less than 24 hours. In making this disclosure, I am not making any representations that the Moose Lodge had any exclusionary policies towards minorities in 1984 or at any other time. My law school classmates and I were under the impression that minority members of our law school class would not be welcome at a party at the Moose Lodge and for this reason we immediately resigned our membership in the Moose Lodge. I do not know whether the Moose Lodge had any formal or informal policy of excluding individuals based on gender, race or ethnicity in 1984 or at any other time.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is not a judicial selection commission in New Mexico. After January 1, 2001, I applied on line for a federal district judgeship on the Bush/Cheney transition website. I then wrote a letter to U.S. Senator Pete Domenici expressing interest in one of the two vacancies on the U.S. District Court for the District of N.M. I also asked various individuals to write Senator Domenici on my behalf recommending me for appointment to the federal bench. In March of 2001, Senator Domenici interviewed me and other applicants in Albuquerque. In April of 2001, I was one of eleven individuals who Senator Domenici recommended to President Bush for appointment to the federal bench. In May of 2001, I traveled to Washington, D.C. for an interview with Justice Alberto Gonzales and other members of the White House Counsel's staff. Several weeks later I received a call from a member of the White House Counsel's staff advising me that my application was moving to the next level and shortly thereafter, I received

various questionnaires and forms which I preceded to fill out and send to the Department of Justice. Sometime around June 25, 2001, I was interviewed by two FBI agents assigned to conduct my FBI background check. Additionally, I have had conversations with Justice Department officials about the nomination and confirmation process.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Constitution establishes the three branches of government and while Articles I, II and III are not lengthy, they clearly define the separate roles of the legislative, executive and judicial branches of government. Thus the doctrine of separation of powers is embedded in our Constitution.

The proper role of the judge is to follow the Constitution and apply the law as written by the Legislature to cases or controversies properly before the Court. The judge must

adhere to the principle of *stare decisis*, as the citizenry's respect for judicial decisions depends upon the certainty and security associated with established precedent.

Senator EDWARDS. Terrific, terrific. Welcome. Thank you for what you are doing. Well, thank you all. Thank you for being here.

Most of these questions will be directed to all three of you, so we will just ask you each to comment on them.

As all three of you know, I am sure, for years Federal judges had a wide discretion in sentencing criminal defendants, and that discretion has been fairly severely limited through the Sentencing Guidelines, although they do continue to have the authority in extraordinary circumstances to make changes.

I would just like for each of you, if you would, to comment on how you perceive the responsibility of a Federal district court judge should play out in trying to deal with the tension between fairly restrictive sentencing guidelines and a need you may feel in an individual case to deal with the particular circumstances of the case.

Judge why don't we start with you? You obviously have some experience in this area.

Judge JOHNSON. Well, Mr. Chairman, from, I guess, a personal standpoint, I like the idea of having, you know, the guidelines, and I believe they came about because of, you know, wide discrepancies in sentencing that were being handed down by Federal district judges. And certainly what could be a light sentence in one area of the country, another area could be, you know, a very lengthy sentence. So I think the uniformity is good.

I am in a jurisdiction where there are for some offenses mandatory minimums that the legislature has enacted, and quite frankly I think that is good. It tends to promote more uniform, you know, and consistent sentencing patterns, and I think overall that is good.

And I would certainly have no difficulty in following the Sentencing Guidelines, although, again, I haven't, you know, been in the Federal system. But as I understand, there are procedures for, you know, departing either upwards or downwards based on factors that are set forth in the Guidelines.

Senator EDWARDS. Thank you very much, Judge.

Mr. Bates?

Mr. BATES. The Sentencing Guidelines are obviously an important issue, and they sprang from very important considerations that Congress took into account. And they don't always play out perfectly in every instance, I am sure. I would attempt, if confirmed as a district judge, to apply them under the rule of law, consistent with what is required as enacted, but certainly bringing to bear where I could my desire to have fair, impartial justice administered through the criminal justice system.

Senator EDWARDS. Mr. Engelhardt?

Mr. ENGELHARDT. Yes. Mr. Chairman, I would echo my colleagues' comments and I would point out, too, that I have had the opportunity to discuss the Sentencing Guidelines with some of the members of the bench in my jurisdiction and they seem to believe that the uniformity that has come about as a result of them is something that is very desirable on their behalf.

As you pointed out, they do afford some departure one way or the other in certain limited circumstances, and I think it is important that the judge have the discretion within the Guidelines. And from what I have been told by judges in my jurisdiction, they believe



that that discretion is something that affords them the degree of flexibility that they like.

Senator EDWARDS. Okay, thank you very much.

In *Griswold* and *Roe v. Wade*, the U.S. Supreme Court found that there was a constitutional right to privacy. I have a couple of questions related to that.

First, do you believe there is a constitutional right to privacy? Second, do you believe that constitutional right to privacy includes a woman's right to have an abortion?

Judge JOHNSON?

Judge JOHNSON. Senator, *Roe v. Wade*, *Griswold v. Connecticut*, those Supreme Court cases—that is well-settled precedent. *Roe* is almost approaching 30 years. I believe *Griswold* was decided in around 1965 or 1966.

Senator EDWARDS. In the 1960s, yes.

Judge JOHNSON. But, again, you know, they were part of a line of cases dealing with the privacy rights and it is well-settled precedent. And if I am confirmed to be—fortunate enough to be confirmed by the United States Senate, then I would certainly follow that binding and controlling Supreme Court precedent.

Senator EDWARDS. Thank you, Judge.

Mr. Bates?

Mr. BATES. I agree with Judge Johnson. It is well-settled precedent. Privacy rights have been identified in a number of contexts by the Supreme Court, and as a district judge I would certainly abide by the rulings of the Supreme Court and follow them very faithfully.

Senator EDWARDS. Mr. Engelhardt?

Mr. ENGELHARDT. Yes. Mr. Chairman, I also agree that it is well-settled law; both of those cases are well-settled law. I think the Supreme Court has cited those cases in opinions that have followed over the years, and I would have no qualms or reservations certainly about applying those concepts were I to be confirmed on the district court level. I would certainly apply those to the letter and the spirit in which they have been rendered by the U.S. Supreme Court.

Senator EDWARDS. Thank you all.

As you all know very well, we have had a real problem with Federal judges having huge caseloads. While nobody understands better than you and I how important it is for individual cases to get the attention they need and they deserve, it is also true that when justice is delayed, it is justice denied in many cases. It is important for these cases to move.

I wonder if I could get each of you to sort of tell me what your view, your perspective is on how you balance the need to move cases, particularly given the caseloads that Federal judges carry today, against the need to have each case receive the attention that it deserves.

Judge JOHNSON. Senator, I have got, I guess, a little bit of experience in the State court system. In my court, we have a very high criminal caseload and I know some of the procedures I have used. I mean, I have gotten a case to the jury on a Wednesday afternoon, and then while the jury is deliberating Thursday morning I will start the next case.

So I mean part of it may mean, you know, burning the midnight oil and having the lawyers, you know, get the case tried. I think, again, docket control, the use of techniques such as trailing dockets—and I am sure from your days as a litigator, you know, you probably didn't like if you had cases set on a trailing docket. But that avoids a situation where if the case settles right in advance or if there is a plea in a criminal case, then there is another case to step up and to move it. So, you know, there are ways you can do that.

In the civil cases, again, you know, you give the attorneys enough time to do the discovery and get the case, but don't grant continuances. Lots of times, you know, a firm trial setting is the best way for a case to get resolved or to get settled.

In New Mexico—and certainly the work that this Committee is doing by having the confirmation hearing last week of the other nominee from New Mexico, and certainly giving me an opportunity to have a confirmation hearing—in New Mexico, the United States District Court, according to the Administrative Office of the Courts, has the third highest caseload per judge of any Federal district in the Nation.

A lot of that is attributable to increased caseload in Las Cruces, and it is border-related activity. But the current judges now—you know, they are extensively using senior judges. We also—and, again, this is what I understand; a lot of districts don't do this, but the Federal magistrates a very valuable there.

They are involved in the rotational assignment on civil cases, so they are assigned a civil case. And, of course, if a party wishes to have an Article III judge hear the case, then they can strike the magistrate. But the Federal magistrates in our district, many of them have former experience as State judges.

Senator EDWARDS. Magistrates are trying jury cases?

Judge JOHNSON. They are trying jury in civil—

Senator EDWARDS. With the consent of the parties?

Judge JOHNSON. With the consent of the parties, and many times the parties, you know, will consent to that because otherwise they are going to get a quicker trial setting.

Senator EDWARDS. Do you have any particular techniques to get cases settled? Alternative dispute resolution—do you involve yourself in that process? What is your approach to that?

Judge JOHNSON. In a State court system, I do a lot of civil mediation for—I am in an 8-judge district, and obviously I don't think it is appropriate for a trial judge to mediate the case that is pending before him.

Senator EDWARDS. They do it all the time.

Judge JOHNSON. They do. I don't.

[Laughter.]

Senator EDWARDS. In my experience, they do.

Judge JOHNSON. My colleagues, they will refer cases to me. We mediate cases for one another, particularly on the civil cases.

Senator EDWARDS. But generally speaking, you don't mediate and get involved in the mediation if you are going to actually try the case?

Judge JOHNSON. I don't think it is right because the mediation techniques that I use—basically, there is an order entered by the

judge, say, if I am the mediator. Both sides have to submit a confidential settlement paper where they lay their cards out on the table. I don't let the attorneys see what the other side is presenting, but as a mediator it helps me to see if there are some areas where I can push the parties toward mediation and then I kind of do some shuttle diplomacy and go back and forth. So with that kind of disclosure, I personally feel it is inappropriate for the trial judge, you know, to have that information ahead of trial.

Senator EDWARDS. I agree with that.

Judge JOHNSON. But we have gotten a lot of cases settled that way. There is mandatory mediation in the Federal courts, and I think that is good. The only reservation I have about that is, you know, some cases—I mean, you can force the parties to go to mediation, but there are just some cases that aren't going to settle. So I think you need to get a sense from the attorneys whether or not it is a waste of time.

Senator EDWARDS. Sure.

Mr. Bates, same issue. How do you balance the need to move cases with the heavy caseload? Also, the second question: Do you have ideas about how you can participate and be involved in helping cases get resolved?

Mr. BATES. I think that participation is very important. A district judge needs to be a participant in the management of the cases and to come up with ideas, but also prompt the parties to move things.

It is fortunate in the district court that I have been nominated for that there are some very valuable tools available. There are excellent magistrate judges for part of the process, not just to try some cases with the consent of the parties, but also in handling discovery issues and other things along the way in cases.

Also, there is a mediation program that I think is very valuable to the court, using local practitioners to try to resolve cases as impartial mediators or early neutral evaluators. And I would certainly expect to use all the tools available to me, but the primary one is probably hard work. I think a judge needs to be very aggressively involved in prompting the movement of cases towards speedy resolution.

Senator EDWARDS. I agree with that. Thank you, Mr. Bates.

Mr. Engelhardt?

Mr. ENGELHARDT. Yes. Senator, we have in my jurisdiction a very strong magistrate system that I find greatly aids in the discovery process. An issue is joined, trial dates are assigned and cut-off dates are assigned promptly. Cases are moved through, with the help of the magistrates on discovery type of issues, and trial dates are honored.

As a matter of fact, some of the attorneys in my area, in the New Orleans area, don't enjoy practicing in Federal court for that reason. However, I as a practitioner have always enjoyed that and have found it to give a lot more certainty to the process. And I think it cuts down on a lot of the more expensive aspects of litigation because it forces the parties to fine-tune the issues very, very promptly in the litigation.

With regard to trying to resolve cases, I think that one of the things that district court judges should do is to try to mediate each

other's cases, and I guess this goes back to something that Judge Johnson mentioned in his State jurisdiction.

We have magistrates in my jurisdiction that do mediate cases, where the judge refers the case to the magistrate for that purpose. But I think it is also important—if the parties feel more comfortable with a district judge mediating the case, I, if confirmed, would be willing to do that for other members of the bench because, as was indicated earlier, a lot of parties don't want the judge—especially if it is not a jury trial, don't want the finder of fact exposed to the arguments of counsel and perhaps some evidence that may or may not be admissible once you get to trial.

But I think that in my jurisdiction we have got a good record of moving cases forward, and I certainly want to uphold that, along with the system that our clerk of the court has developed and that our judges have employed up to this point.

Senator EDWARDS. Well, I want to say thank you to all of you. You all come with impressive backgrounds. You are obviously held in high esteem by your colleagues. Your family friends who are here and your family and friends who are not here should take great pride in the service you have provided and the service you are going to provide to your country.

On a personal note, I would hope that when you are confirmed, as I believe you will be—Senator Hatch has just appeared and he may want to ask a question or two—when you are sworn and you begin your service, the need to move cases, which we all know is important—it is also critically important that everybody get their day in court and that everybody be treated exactly the same. It is something that I personally feel very strongly about, the little guy having a fair chance and a fair day in court. So I am confident from what I have heard from all of you and from all the wonderful testimonials and testimony that we have had about you that all three of you will do that.

Senator Hatch, did you want to make a comment or ask questions? Welcome, we are glad to have you here.

Senator HATCH. It is nice to be with you, Senator Edwards.

Let me just make a comment because I believe all three of these gentlemen are tremendous candidates and nominees. I have done a lot of checking and I have done a lot of work on it, and I just want to compliment each of you for being willing to serve because I know it is a sacrifice to serve on the Federal bench. It is not only a sacrifice of time and effort, it is a sacrifice for those of you who are as successful as you have been to go on the bench and frankly make less than a number of first-year law review graduates.

If it was money, we probably wouldn't serve, if that were the issue. The issue is service to our country, and I don't know of any branch of service in this country that does more to save and preserve and protect the Constitution of this country than the judicial branch. So I just want to personally thank each of you for being willing to serve, and I am going to support you and hopefully we can get you through as quickly as we can.

Thank you, Senator Edwards.

Senator EDWARDS. Thank you, Senator.

Thank you all very much for being here.

Judge JOHNSON. Thank you, Mr. Chairman.

Mr. BATES. Thank you, Mr. Chairman.

Mr. ENGELHARDT. Thank you, Mr. Chairman.

Senator EDWARDS. You are free to go, if you would like.

Ms. Freeman, if you will come up, please.

Do you have either an opening statement and/or members of your family and friends you would like to introduce?

**STATEMENT OF SHAREE M. FREEMAN, NOMINEE TO BE DIRECTOR OF THE COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE**

Ms. FREEMAN. I have an opening statement. My family is not here, but I claim the rest of the room. They are all my supporters and I thank them for coming.

Senator EDWARDS. We are glad to have them and we will be happy to hear from you.

Senator HATCH. It looks like a suspicious bunch to me.

[Laughter.]

Ms. FREEMAN. Mr. Chairman and Senator Hatch, good afternoon, and thank you for scheduling this hearing in view of the pressing matters that confront this Nation as we proceed forward from the tragedy of September 11. Please also allow me to extend my humble and sincere thanks to Senator Warner and Chairman Hyde for their kind and gracious words.

That I sit before you here today to be considered for the position of the Director of the Community Relations Service is a testament to the dreams and struggles that so many of you embraced in the 1950s and 1960s. I wish that my parents were alive to see this day. They played a definitive role in leading me to the path of public service.

Before the United States Supreme Court rendered its opinion in *Brown v. Board of Education*, Ralph and Leona Freeman were overcoming and surviving racial prejudice and discrimination. My father, a John F. Kennedy devotee, would often echo the President's inspirational words and remind my older brother, Rene, and myself that the world and times were changing.

He would pat my head and say, "Let the word go forth from this time and place to friend and foe alike that the torch has been passed to a new generation of Americans, born in this century, tempered by wars past, disciplined by a hard and bitter peace."

At 6 years of age, his words resonated, but were not clear. As I matured, I held tightly to his dream of a new generation committed to service to this country. My father died when I was 7 and left a young widow to raise two children in a world that practiced segregation, from the water fountains to the restrooms and everywhere else in between.

My mother worked as a transit clerk for the New York City subway, and cleaned homes after hours to ensure that I could attend parochial elementary and high schools. Sometimes, I tagged along with her. Though my mother's highest academic achievement was a GED, she used to press wrinkled dollars in my palm after a long day's work and fervently whisper in my ear, "This is for college."

My mother also made time to be active in and about the community, particularly in Birmingham, Alabama, where her family had its roots. When other children were attending swim meets and tak-

ing ballet lessons, it was not uncommon for my mother to take me and my brother to a freedom fight march. I grew up on the words of Reverend Martin Luther King.

After attending a peaceful demonstration, we would gather at a relative's home and talk about everything from politics to how a sit-in participant covers one's head to avoid fatal blows if hit by a billy club of an over-zealous State trooper.

While my mother had no delusions about the world in which she lived, she clung to her dreams of a better world for her children. She used to tell me, "You must be the change you wish to see in the world," and then remind me that Gandhi was a fine example of practicing what you preach.

I was already enrolled in college at St. Lawrence University when my mother died, but she left a legacy of service and hard work and a belief that I could accomplish anything.

For me, this nomination is a crossroads and a culmination of a career devoted to public service. When attending Georgetown University Law School, I had the opportunity to intern in the Criminal Division for Roger Adelman, of the U.S. Attorney's Office for the District of Columbia. I gleaned firsthand the nuts and bolts of interaction between metropolitan law enforcement and the interaction with Federal law enforcement. Never has such cooperation become more poignant as now, in the aftermath of September 11.

After graduation, I had the privilege of clerking for Norma Holloway Johnson, in the U.S. District Court for the District of Columbia. This provided me the opportunity to observe some of the country's finest trial lawyers in action. I had a bird's eye view of the intricacies of civil practice, some of which included racial discrimination cases filed against Federal Government agencies.

At the conclusion of my clerkship, I joined the Philadelphia district attorney's office in 1982, prosecuting cases at the lowest level of the legal totem pole. I handled the regular fare of cases—thief, forgery, robbery, aggravated assault and sexual assault.

For me, the highlight of this position was the opportunity to mentor the local high school students and serve as a manager for a fledgling victim witness assistance program. These positions allowed me constructive interaction with the community and local residents.

Mentoring has been part of my personal life for a long, long time. I have mentored students from Philadelphia, to Anacostia High School, to California. These children have the sheer determination and guts to leave behind rough backgrounds and overcome tough personal hurdles and graduate from college, in some cases graduate school, land good jobs and start stable families of their own.

In 1984, I joined the U.S. Department of the Interior as an attorney adviser for the Indian Division of the Solicitor's Office. In the early 1980s, Indian gaming did not exist and resources were severely limited. Tribes and tribal members were struggling for self-preservation and self-determination in harsh and very prejudiced environments.

That these good people were treated with loathing and contempt was an eye-opening and unforgettable lesson for me. Every time I visited the West, I was given an American history lesson, a lesson taught by the other side, the Indian side. I learned of cultures

steeped in history and enduring traditions that resisted assimilation, not out of pride, but out of a sense of preservation of customs and heritage.

It was during my tenure at Interior that I first became acquainted with the Community Relations Service. The Washington magazine refers to CRS as “the pint-size agency with a world-class mission, rated as one of the seven best places to work in the Federal Government.” I worked closely with CRS regional offices regarding an Indian tribe and allegations concerning education-related discrimination against a group of Indian students. CRS came through with flying colors.

Four years ago, I joined the House Judiciary Committee as a counsel for the full Committee, and was responsible for fair housing, ADA, hate crimes, racial profiling, voting rights, and a host of other civil rights issues. This position provided me with an opportunity to work on some of the most emotionally-charged and controversial issues that came before the Committee. I worked with a diverse group of people with even more diverse political views.

It is indeed a special honor for me to be considered for this position. I extend my serious gratitude to the President and the Attorney General for the confidence and honor that they have bestowed upon me by selecting me to be the Director of the Community Relations Service.

My personal thanks to Chairman Hyde and his chief of staff, Tom Mooney, for having faith in me and encouraging me to expand and explore my horizons. I thank the members from both sides of the aisle, the civil rights organizations, the minority community, and my family and friends for their patience and support.

The Community Relations Service is an important cog in the Department of Justice and I am committed to its mission. From a Birmingham jail in 1964, the Reverend King wrote, “Injustice anywhere is a threat to justice everywhere. We are caught in an escapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. We must maintain our vigilance in pursuit of justice.”

Finally, Mr. Chairman, be assured that I recognize and fully appreciate the importance of working closely with you and your colleagues in Congress on issues and situations that impact the well-being of our constituents. If confirmed, I would be honored to serve as the Director of the Community Relations Service.

I look forward to answering your questions.

[The biographical information of Ms. Freeman follows.]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

Full name (include any former names used.)

Sharee Michele Freeman. Sharee Freeman Abdessamad, Sara-Lee, Sha, Cher.

2. Address: List current place of residence and office address(es).

Arlington, Virginia 22207

House International Relations Committee  
U.S. House of Representatives  
2170 Rayburn House Office Building  
Washington, D.C. 20515

3. Date and place of birth.

3/3/55 New York, New York

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Divorced

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

8/77 to 5/80 Georgetown University Law Center J.D. received May 1980.

10/76 to 3/77 Adelphi University Paralegal Certificate received March 1977.

9/72 to 5/76 St. Lawrence University B.A. Government/Sociology received May 1976.

Fall 1975 American University attended the Washington Urban Semester

6/77 to 8/77 Notre Dame Law School - Council on Legal Education (CLEO) summer scholarship program.

6. Employment Record: List (by year) all business or



professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

10/76 to 3/77 Abraham and Straus Department Store, Manhasset, New York Position: Sales Clerk

1/77 to 3/77 Gralla Publications, 1515 Broadway, New York, New York Position: Circulation Clerk

3/77 to 6/77 Abraham and Straus, 100 Paramus Park, New Jersey Position: Sales Clerk

3/77 to 6/77 IBM, Parson Pond Drive, Franklin Lakes, New Jersey; employed through Joule Temps Position: Executive Secretary

6/78 to 4/79 Indian Law Reporter, American Indian Legal Training Program, Washington, D.C. Position: Legal Clerk

6/78 to 9/79 Hyatt Regency Hotel, Washington, D.C. Position: Concierge

2/79 to 9/79 A.L. Nellums, Washington, D.C. Position: Writer

Summer 1979 U.S. Attorneys' Office, Washington, D.C. Position: Summer Law Clerk

8/80 to 8/81 U.S. District Court for the District of Columbia, Washington, D.C. Position: Judicial Law Clerk for Norma Holloway Johnson.

8/81 to 12/81 Hamilton, Rabinovitz and Szanton, Washington, D.C. Position: Research Clerk

3/82 to 4/84 Philadelphia District Attorney's Office, Philadelphia, Pa. Position: Assistant District Attorney

8/91 to 12/92 Nu Skin Independent Distributor - Cosmetic Salesperson part-time.

4/84 to 7/97 Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. Position: Acting Assistant Solicitor and Attorney Advisor

7/97 to 3/01 Judiciary Committee, U.S. House of Representatives Washington, D.C. Position: Full Committee Counsel

1998 to present Office of Congressman Henry Hyde, U.S. House of Representatives, Washington, D.C. Position: Counsel and Judiciary Committee Legislative Assistant

3/01 to present International Relations Committee Washington, D.C. Position: Counsel

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Presidential Scholar 1972; St. Lawrence University Scholarship; Georgetown University Scholarship; Inger Jo Hansen Award for Leadership and Community Service 1975; Department of Interior Star Award 1996; Department of Interior Incentive Awards 1994, 1995; Department of Interior Diversity Council Award, 1994; White House and Department of Interior Point of Light Volunteer Award, 1990; Department of Interior Sustained Performance Award, 1987.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

District of Columbia Bar Association Member - 1988 to present  
State of Pennsylvania Bar Association Member - 1981, inactive  
National Bar Association, Greater Washington Area Chapter  
Women Lawyers Division - Member 1999-present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

District of Columbia Bar Association  
State of Pennsylvania Bar Association  
National Bar Association, Greater Washington Area Chapter

Women Lawyers Division

Other Organizations:

Arlington Republican Women's Club, member 2000-present  
 Arlington County Republican Committee - Marshall Precinct  
 Captain 2000-present  
 St. Augustine Church, member 1984-present  
 National Republican Lawyer's Association, 1999-present  
 The S.B. Step Ahead Program, Inc., member  
 D.C. Public Schools Mentors, Inc., member  
 St. Lawrence University Alumni Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Pennsylvania Supreme Court - 1981, inactive because I made a decision to pay Bar dues once per year.

D.C. Court of Appeals - 1988

U.S. District Court, Eastern District of Pennsylvania - 1984

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None

13. Health: What is the present state of your health? List the date of your last physical examination.

Good health - Last exam: May 2001

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

3/82 to 4/84 Philadelphia District Attorney's Office,  
Philadelphia, Pa. Position: Assistant District Attorney.

4/84 to 7/97 Office of the Solicitor, U.S. Department of the  
Interior Washington, D.C. Position: Acting Assistant Solicitor  
and Attorney Advisor. Excepted Service.

15. Legal Career:

- a. Describe chronologically your law practice and  
experience after graduation from law school  
including:

1. whether you served as clerk to a judge, and  
if so, the name of the judge, the court,  
and the dates of the period you were a  
clerk;

I served as a law clerk to Chief Judge Norma Holloway Johnson  
in the U.S. District Court for the District of Columbia 8/80  
to 8/81.

2. whether you practiced alone, and if so, the  
addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms  
or offices, companies or governmental  
agencies with which you have been  
connected, and the nature of your  
connection with each;

Position: Assistant District Attorney  
Philadelphia District Attorney's Office  
Philadelphia, Pa.  
3/82 to 4/84

Position: Attorney/Advisor and Assistant Solicitor  
U.S. Department of the Interior  
Solicitor's Office  
1849 C Street, N.W.  
Washington, D.C. 20240  
4/84 to 7/97

Position: Counsel  
U.S. House of Representatives

Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515  
7/97 to 3/01

Position: Counsel  
U.S. House of Representatives  
International Relations Committee  
2170 Rayburn House Office Building  
Washington, D.C. 20515  
3/01 to present

Office of Congressman Henry Hyde  
U.S. House of Representatives  
2110 Rayburn House Office Building  
Washington, D.C. 20515  
1998 to present

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1980-1981 Federal District Court Clerkship - Performed legal research and writing related to federal, state, civil and criminal law, preparing brief synopsis of cases scheduled for oral argument, assisting in the preparation of judicial opinions, reading and summarizing slip opinions of the Supreme Court and D.C. courts, answering telephone inquiries and correspondence from counsel, parties, press, and other judicial officer of the court, coordinating courtroom calendar, organizing and maintaining chamber's library, supervising part-time interns.

1982-1984 Criminal law trial work

1984- 1997 Civil law - Federal trial work, administrative appeals and hearings, writing advisory opinions and decisions for Secretarial level officials, reviewing and drafting federal regulations, speaking at training sessions for Department bureaus and self-governance tribes. Concentration in Indian Law, Education Law, Government Contracting, special education, social services, federal property management, housing, road construction, debt collection, FOIA, facilities construction, building safety - OSHA, civil rights,

appropriations law, ADA.

1997-2001 - Constitutional Law, Civil Rights, Fair Housing, Voting Rights Act, Criminal law, Health Law, as House Judiciary Full Committee Counsel.

2001-present - Intellectual Property, Internet, Courts, Immigration, Constitutional Law, Criminal Law, Administrative Law, Copyright, Trademark, Patents, Commercial Law, as Judiciary Legislative Assistant for Representative Henry Hyde.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Victims of Crime; Agency Cabinet and sub-Cabinet level officials; U.S. Congressmen and women.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
2. What percentage of these appearances was in:
  - (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.
3. What percentage of your litigation was:
  - (a) civil;
  - (b) criminal.

Philadelphia District Attorney's office - appearance in State Criminal Court frequently - 100%

Solicitor's Office - appearance in Civil Federal Courts 25% and Administrative Hearings 75%. During the early years of my tenure at DOI there were more cases in federal court on temporary restraining orders than in the later years. The last two years the majority of my work was related to negotiated rule making activities and my administrative and federal case load had decreased. In the last two years at DOI, I supervised four attorneys who had active caseloads in federal court and

who were handling administrative appeals and hearings.

U.S. House of Representatives - once - Federal Court, civil action.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

State Criminal Court cases - Sole counsel, Number of Cases - several thousand or more as an Assistant District Attorney.

Federal Court - Co-Counsel/Associate Counsel/Agency Counsel, Number of Cases - Approximately 40

Administrative Appeals and Hearings - Sole counsel, Number of Cases - more than 50 in a 13-year period.

5. What percentage of these trials was:
  - (a) jury;
  - (b) non-jury.

All non-jury trials.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representations;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Flandreau Indian School Board v. Clark - Civil 84-4152,

Civil Motion for Summary Judgment and Trial in Sioux Falls,  
South Dakota, U.S. District Court.

Summary of the Case: This case was filed by plaintiff school board requesting injunctive relief challenging the defendant Bureau of Indian Affairs(BIA) Education office's selection of a school superintendent. The local school board wanted to be consulted prior to the selection. The BIA took the position that consultation with the local school board for an employment decision was not required. The court, after hearing a motion for summary judgement and trial, found in favor of the BIA.

Date of Representation: 1984

Judge Jones, U.S. District Court, South Dakota.

Counsel for the Defendant: Represented the United States

I served as Agency Co-Counsel and participated in the examination of witnesses and opening statement.

Bonnie Ulrich was lead counsel.  
Assistant United States Attorney  
United States Attorney's Office  
Post Office Box 5073  
Sioux Falls, South Dakota 57117-5073  
605-330-4400

Counsel for the Plaintiffs/Opposing Counsel: Represented the local Indian School board at the Flandreau Indian School.

Native American Rights Fund  
Robert Anderson  
University of Washington at Seattle  
206-685-2861 and  
Anita Remoroski (possibly not practicing law, is a medical doctor)who may be reached through Terry Pechote 605-341-4400.

2. Eastern Band of Cherokee Indians v. U.S. 16 Cl.Ct.75  
(1988). United States Claims Court.

Summary of the Case: This case involved an allegation that the Department of Interior(DOI)should have provided increased funds to the Cherokee Central School under 25 U.S.C 2008(b) to make the school funding equivalent to what the local public schools in the state of North Carolina were receiving. The Department took the position that comparisons between the



local public schools and a BIA school for funding would not yield a fair result given the various different funding sources and components that support a BIA school. The court entered an order for summary judgment in favor of Department.

Date of Representation: 1988

Judge Wilkes C. Robinson, U.S. Claims Court.

Counsel for the Defendant: Represented the United States

I served Agency Counsel(Of Counsel).

George William Sherk was the lead counsel.  
U.S. Department of Justice  
Environment and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001  
202-514-2000

Mr. Sherk has left the Department and is not listed in Martindale and Hubbell.

Counsel for the Plaintiff/Opposing counsel: Represented the Eastern Band of Cherokee Indians  
Ben Oshel Bridges  
P.O. Box 248  
21 Colonial Square  
Sylva, North Carolina  
828-586-3131 or  
Eastern Band of Cherokee Indians 828-497-2771

3. Meyers v. San Juan School District, 93-C-1080-J 905 F. Supp. 1544 (1995) United States District Court, Utah

Summary of the Case: This case involved an allegation by the Department of Justice and the plaintiffs, parents of Navajo Indian students, that the San Juan County School District was discriminating against these Navajo students in the Utah portion of the state by not providing adequate high school educational facilities. The Bureau of Indian Affairs was operating an elementary school at Navajo Mountain. The State of Utah wanted to house a temporary state-funded school in shared facilities with the BIA until a new state-funded and operated high school facility could be built. The case was settled. Shared facilities were permitted under a use agreement until the state of Utah completed building a high

school for the Navajo Mountain community.

Date of Representation: 1995

Judge Bruce Jenkins, U.S. District Court, Utah.

Counsel for the Plaintiffs:

I served as Agency Counsel with Tom O'Hare.

Tom O'Hare  
Office of the Regional Solicitor  
2400 Louisiana Blvd. N.E.  
Building 1, Suite 200  
Albuquerque, New Mexico  
505-346-2700

Larry Baca was lead counsel.  
U.S. Department of Justice  
Civil Rights Division  
P.O. Box 65958  
Washington, D.C. 20035  
202-514-3874

Eric Swensen  
Attorney for the Plaintiffs  
P.O. 5798  
Salt Lake City, Utah 84158  
801-521-5674

Frank Seanez  
Navajo Nation Department of Justice  
Window Rock, Arizona 86515  
520-871-7166  
520-871-7803

Counsel for Defendants/Opposing Counsel:

Brinton R. Burbidge  
Burbidge, Carnahan, Ostler and White  
Key Bank Towers, 50 South Main Street, Suite 1400  
Salt Lake City, Utah 84144  
801-263-5300

Randy Austin  
Kirton & McConkie  
60 East South Temple #1800  
Salt Lake City, Utah 84111

801-328-3600

John Mc Allister, Assistant Attorney General  
State of Utah  
Attorney General' Office  
P.O. Box 140583  
State Capitol Building, Suite 236  
Salt Lake City, Utah 84111

4. Vigil v. Rhoades, 746 F. Supp. 1471 (1990); Vigil v. Rhoades 953 F. 2d 1225 (1992); Lincoln v. Vigil, 508 U.S. 182 (1993). United States District Court, New Mexico; United States Circuit Court, Tenth Circuit; United States Supreme Court.

Summary of the Case: In this case, Plaintiffs alleged that the Indian Health Service's (IHS) and BIA's alleged termination of a pilot program called the Indian Children's Program was procedurally invalid. This case was appealed to the Supreme Court of the United States as Lincoln v. Vigil. The case was resolved in favor of DOI and HHS. DOI took the position that it never stopped providing BIA special education services even though the program with IHS participation was no longer operating.

Date of Representation: 1986 to 1997

Judge Juan G. Burciaga, U.S. District Court, New Mexico.  
Judges Seymour, Barrett and Baldock, Tenth Circuit  
Supreme Court of the United States

Counsel For the Defendants:

I served as Agency Counsel for DOI

Duke McCloud served as Agency Counsel for HHS  
General Counsel's Office  
HHS  
5600 Fisher's Lane  
Rockville, Maryland 20857  
301-443-8220

Ray Hamilton was lead counsel  
Assistant United States Attorney  
United States Attorney's Office  
201 3<sup>rd</sup> Street, N.W. Suite 900  
Albuquerque, New Mexico 77102  
202-305-0316/505-346-7274

DOJ Appellate lawyers:

Ed Kneedler  
Deputy Solicitor General  
Solicitor General's Office  
Department of Justice, Room 5266  
Washington, D.C. 20530  
202-514-3261

Andrew Mergen  
Appellate Division  
U.S. Department of Justice  
P.O. Box 23795  
L'Enfant Plaza Station  
Washington, D.C. 20026  
202-514-2813

Counsel for the Plaintiff/Opposing counsel:

Joel Jasperse  
Northern New Mexico Legal Services  
P. O. Box 1475  
Gallup, New Mexico 87305  
505-722-4417

5. Sanostee v. Hodel, Case No. 84-1033

Summary of the case: This case involved a challenge by the Navajo Nation to overturn a BIA decision to close down the Sanostee School because the school facilities were unsafe. This case was heard on a request for a temporary restraining order. The Court denied the order and ruled in favor of the agency.

Date of Representation: 1984

Judge Bobby Baldock, U.S. District Court, New Mexico.

Counsel for the Defendant:

I served as Agency Counsel.

Ray Hamilton was the lead counsel.  
Assistant United States Attorney  
United States Attorney's Office  
201 3<sup>rd</sup> Street, N.W. Suite 900  
Albuquerque, New Mexico 87102  
202-305-0316/505-346-7274

Counsel for the Plaintiff/Opposing Counsel:  
Dan Rosenfelt  
Rosenfelt & Barlow  
1805 Carlisle N.E.  
Albuquerque, New Mexico 87110  
505-266-3441

6. Navajo Nation v. Hodel, 645 F. Supp. 825 (1986) United States District Court, Arizona.

Summary of the Case: I handled the administrative appeal for this case and was also responsible as agency counsel for the federal court action. I argued a motion for summary judgment in this case and handled some of the depositions in this case. In this action, the Navajo Nation challenged the denial by the Department of the Interior and administrative findings upholding the denial of their Indian Child Welfare Grant funds. The Court granted the Tribe's motion in part and denied their motion in part.

Date of Representation: 1986

Judge Rosenblatt U.S. District Court Arizona.

Counsel For the Defendant:

I served as Agency Counsel.

Mike Arkfeld was the lead attorney  
Assistant United States Attorney  
U. S. Attorney's Office  
40 N. Central Avenue Suite, 1200  
Phoenix, Arizona 85004  
602-514-7739

At the very beginning of the case the AUSA was Paul Corradini.

Counsel for the Plaintiff/Opposing Counsel:

Craig Dorsey, Esq.  
2121 Southwest Broadway, Suite 100  
Portland, Oregon 97201  
503-790-9060

Kate Hoover  
Assistant Attorney General  
Tohono O'odham Tribe  
Sells, Arizona

602-383-3410  
represented Navajo Nation Department of Justice  
Window Rock, Arizona 86515

7. Sisco v. Clark, Civ. No. 84-711-C United States District  
Court, D.C. and United States District Court, Oklahoma.

Summary of the Case: This was filed as a temporary restraining  
order, class action case against the Department of the  
Interior challenging the decision of the Cherokee Nation to  
prevent students who enrolled at the Flaming Rainbow  
University from receiving higher education tribal contracted  
funds. The government filed and successfully argued a motion  
to transfer the action to Oklahoma. The case was transferred  
to Muskogee, Oklahoma, so that the tribe could join the case.  
The Tribe intervened in 1985 and the case was settled.

Date of Representation: 1984 and 1985

Judge Hogan, U.S. District Court, D.C.  
Judge H. Dale Cook, U.S. District Court, Oklahoma

Counsel for the Defendants:

Alan Brenner  
Environment and Natural Resources Division  
Department of Justice  
Washington, D.C.  
202-305-0466

Roger Hilfiger  
United States Attorney  
U.S. Attorney Office  
Hilfiger and Cook  
620 West Broadway  
Muskogee, Oklahoma  
918-683-4445

Andy Wilcoxsen, Sr. and Jim Wilcoxsen  
represented the Cherokee Nation  
Wilcoxsen & Wilcoxsen  
112 North 5<sup>th</sup> Street  
Muskogee, Oklahoma 74401  
918-683-6696

Counsel for the Plaintiffs/Opposing Counsel:

Jonathan Hill  
Dow, Lohnes and Albertson  
1200 New Hampshire Avenue, N.W., Suite 800  
Washington, D.C. 20036  
202-776-2000

Mike Goldstein  
Dow, Lohnes and Albertson  
1200 New Hampshire Avenue, N.W., Suite 800  
Washington, D.C. 20036  
202-776-2000

James Mc Elfish, Esq.  
Environmental Law Institute  
1616 P Street, N.W.  
Washington, D.C. 20036  
202-939-3800

Julian Fite  
Robinson, Locke and Gage  
now with the Cherokee Nation  
Law and Justice Division  
P.O. 948  
Talequah, Oklahoma 74465  
918-456-0671

8. Malone v. BIA. 38 F 3d 433 (1994) United States District  
Court, Eastern District, California.

Summary of the Case: The Malone case involved a challenge by  
two Wintu Indian brothers who were members of a non-federally  
recognized tribe. The brothers sought higher education  
scholarship funding from the BIA. The court ruled in favor of  
the BIA. An appeal was filed and the court ruled in favor of  
the plaintiffs.

Date of Representation: 1994

Judge Garcia, U.S. District Court, California

Counsel for the Defendant:

I served as Agency Counsel on this case.

Debora (Van De Weijde) Luther was the lead.  
Assistant United States Attorney  
U.S. Attorney's Office  
501 I Street, Suite 10-100

Sacramento, California 95814  
916-554-2720

Counsel for the Plaintiffs/Opposing Counsel:  
Steve Quesenberry  
California Indian Legal Services  
510 16<sup>th</sup> Street, 4th Floor  
Oakland, California 94612  
800-829-0284

David Rapport  
Rapport and Marstson  
405 West Perkins Street  
Ukiah, California 95482  
707-462-6846

9. Sisseton-Wahpeton Sioux Tribe v. Lujan 95-35135, 90 F.3d 351 (1996) United States Circuit Court, Ninth Circuit.

Summary of the Case: This case was argued in 1996 before the Ninth Circuit, where the court ruled in favor of the agency. The Agency Defendants, Bruce Babbitt, Secretary of the Interior, and Robert Rubin, Secretary of the Treasury, moved to dismiss this case on the grounds that it was barred by the doctrines of res judicata and collateral estoppel and, alternatively, by the statute of limitations. This action challenges the validity of the Act of October 25, 1972, 28 U.S.C. 1300d, et seq. ("the 1972 Act"), implemented to distribute sums of money appropriated by Congress to satisfy a final judgment entered by the Indian Claims Commission ("ICC"). The tribes filed suit contending Congress should not have allocated 25% of an ICC judgment fund to nonmember lineal descendants of the aggrieved aboriginal tribe, which had dispersed in the 1860.

Date of Representation: 1996

Judges Browning, Wright, Nelson, Ninth Circuit

Counsel for the Defendants:

I was Agency Counsel on this case, having inherited the case from Duard Barnes, who had retired.

Tony Rogers was lead counsel.  
Environment and Natural Resources Division  
Department of Justice  
Washington, D.C.



202-514-5271

Tamara N. Rountree was lead appellate counsel.  
Appellate Section, Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C.  
202-514-1174

Counsel for Plaintiffs/Opposing Counsel:

Bertram E. Hirsch  
81-33 258<sup>th</sup> Street  
Floral Park, New York 11004  
718-347-3022

10. Bay Mills Indian Community v. Brown, Civ. No. 92-1247  
United States District Court, D.C.

Summary of the Case: The Bay Mills Indian Tribe challenged a regulation which set the starting date for a Bureau of Indian Affairs General Assistance Program in the State of Michigan. The BIA took the position that the start date for the general assistance program would be October 1, 1992, the beginning of the 1993 fiscal year. The Tribe took the position that the BIA was required to start a general assistance program immediately and sought emergency injunctive relief. The Court ruled in favor of the BIA.

Date of Representation: 1992

Judge Thomas Penfield Jackson

Counsel for the Defendant:

I was Agency Counsel on this case.

Edward J. Passarelli was lead counsel.  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 663  
Washington, D.C. 20044  
202-305-0468

Plaintiffs Counsel/Opposing Counsel:

Phil Baker-Shenk, Esq.  
Dorsey and Whitney  
1001 Pennsylvania Avenue, N.W., Suite 300 south  
Washington, D.C. 20004

202-824-8824

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)
  1. I participated as one of two agency counsels in Negotiated Rulemaking for the Self-Government Tribes - 25 Code Federal Regulations.
  2. I developed and implemented the New Attorney Orientation Program at the Department of the Interior.
  3. As a member of the Department of the Interior Diversity Council, I participated when the Council recommended the implementation of a Department-wide training program for managers on diversity issues.
  4. I was responsible for all preparations related to two House Committee on the Judiciary Full Committee hate crimes hearings on August 4, 1999 and July 22, 1998.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Smith Barney IRA, recently transferred to Paine Webber-\$12,000.

U.S. Government Retirement Thrift Savings Plan - \$108,573.60.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will consult with the Department of Justice Ethics officer in the event of a potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Form

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See Net Worth Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Bush for President - Republican National Committee - Co-Chairman's Office, Director of African American Affairs - Volunteer 2000

Rick Lazio/Joan Johnson Campaign Volunteer 2000

Bush/Allen/Miller Campaign Volunteer 2000

Republican Platform Committee 2000 Volunteer Staff

Mark Earley for Governor Delegate VA Primary in 2001;

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I participate in the S.B. Step Ahead Program which involves monthly cooking and feeding the homeless dinners at the Randall Shelter and Mitch Snyder Homeless Shelter in Washington, D.C. The program also collects books, old computer equipment, clothing, sewing machines and bedding to be shipped and delivered to the poor in South Africa.

I mentor D.C. high schools students in a program called Mentors, Inc. I am assigned one student every two to three years and I assist in helping them with college selections, college applications, and scholarships.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No.

ASSETS		LIABILITIES	
Cash on hand and in banks	43,000	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule		Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	180,930
Real estate owned—add schedule	470,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	34,000		
Cash value—life insurance			
Other assets—itemize:			
PAINE WEBBER IRA	12,000		
THRIFT SAVINGS	128,600		
Total assets	667,600	Total liabilities	180,930
		Net worth	486,670
		Total liabilities and net worth	667,600
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	NO	Are any assets pledged? (Add schedule.)	NO
On leases or contracts	NO	Are you defendant in any suits or legal actions?	NO
Legal Claims	NO	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	NO		
Other special debt	NO		

Financial Statement

Net Worth

Sharee Freeman  
Schedule

Accounts and notes receivable:

Listed as holding a note for Ms. Billie Freeman on 8 acres and a farm house in Walker Valley, New York jointly with my brother, Rene Freeman. He receives all the income.

Real Estate owned:

Residence - Arlington, Virginia, Purchase Price: \$235,000, current Mortgage: \$180,930.50 with Wells Fargo Mortgage Company, Fair Market Value: Over \$320,000.

26 acres of land in the Poconos, Mt. Bethel, Pa., Fair Market Value Estimate: \$150,000



U.S. Department of Justice

Washington, D.C. 20530

JUN 21 2001

Ms. Amy L. Comstock  
Director  
Office of Government Ethics  
Suite 500  
1201 New York Avenue, NW  
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Sharee M. Freeman who has been nominated by the President to serve as Director, Community Relations Service, Department of Justice.

We have conducted a thorough review of the enclosed report and I am satisfied that it presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Spasato  
Acting Assistant Attorney General  
for Administration and  
Designated Agency Ethics Official

Enclosure



Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status (If Not Appropriate, Box)	Incumbent <input type="checkbox"/>	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate <input checked="" type="checkbox"/>	Termination Filer <input type="checkbox"/>	Termination Date (If Applicable) (Month, Day, Year)	<b>Fee for Late Filing</b> Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.
Reporting Individual's Name	Last Name <b>FREEMAN</b>		First Name and Middle Initial <b>SHARÉE M.</b>		Department or Agency (If Applicable) <b>Community Relations Service</b>		
Position for Which Filing	Title of Position <b>Director</b>		Reporting Periods				
Location of Present Office (for forwarding address)	Address (Number, Street, City, State, and ZIP Code)		Telephone No. (Include Area Code)				
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held		<b>2652 N. RICHMOND STREET ARL VA 703-247-3090</b> <b>HOUSE INTERNATIONAL RELATIONS COMMITTEE</b> <b>COUNSEL - HOUSE JUDICIARY COMMITTEE</b>				
Presidential Nominee Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination		Do You Intend to Create a Qualified Diversified Trust?				
	<b>Judiciary</b>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Certification	Signature of Reporting Individual		Date (Month, Day, Year)				
If (E.O. 12812) that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	<b>Sharée M. Freeman</b>		<b>5/8/01</b>				
Other Review (If desired by agency)	Signature of Other Reviewer		Date (Month, Day, Year)				
	<b>Mary G. Grier</b>		<b>6/7/01</b>				
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official		Date (Month, Day, Year)				
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	<b>James S. Spasat</b>		<b>6/21/01</b>				
Office of Government Ethics Use Only	Signature		Date (Month, Day, Year)				
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)							
<b>Annotations per filer</b> <b>Mary Grier - 6/08/01</b>							
(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>							
(Check box if comments are continued on the reverse side) <input type="checkbox"/>							
<b>Agency Use Only</b> <b>MAY 21 2001</b> <b>OGE Use Only</b>							

**SCHEDULE A continued**  
(Use only if needed)

Page Number . 2

BLOCK A		BLOCK B		BLOCK C		
Assets and Income		Valuation of Assets at close of reporting period		Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.		
				Type	Amount	
		None (or less than \$1,001)	Over \$1,000.000*	Dividends Rent and Royalties Interest Capital Gains None (or less than \$201)	Other Income (Type & Actual Amount)	
					Date (Mo., Day, Yr.) Only if Itemize	
1	PHILADELPHIA FED. CREDIT UNION	X				
2	CONGRESSIOAL CREDIT UNION	X				
3	26 ACRES OF LAND BENEVOLENT					
4	SALOMON SMITH BARNEYS IRRA	X				
5	8000 WATSON RD. WATSON, VA					
6	8000 WATSON RD. WATSON, VA					
7	8000 WATSON RD. WATSON, VA					
8	8000 WATSON RD. WATSON, VA					
9	8000 WATSON RD. WATSON, VA					

\* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly filed by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

color relations cannot be used.

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name <b>Freeman Spence</b>		SCHEDULE B			Page Number <b>3</b>
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**Part I: Transactions**

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

Transaction Type (x)	Date (Mo., Day, Yr.)	Amount of Transaction (x)										Certificate of Divestiture			
		Purchase	Sale	Exchange	\$1,000	\$2,000	\$5,000	\$10,000	\$25,000	\$50,000	\$100,000		\$250,000	\$500,000	
Example: Central Airlines Common	2/1/99														
1															
2															
3															
4															
5															

\*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

**Part II: Gifts, Reimbursements, and Travel Expenses**

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$260, and (2) travel-related cash reimbursements received from one source totaling more than \$260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth \$104 or less. See instructions for other exclusions.

None ☐

Source (Name and Address)	Brief Description	Value
Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty).	\$500
Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	\$300
1		
2		
3		
4		
5		

Reporting Individual's Name <b>FREEMAN, SHAREE</b>		<b>SCHEDULE C</b>			Page Number <b>4</b>	
<b>Part I: Liabilities</b> Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts. <span style="float: right;">None <input checked="" type="checkbox"/></span>						
					Category of Amount or Value (x)	
Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term If applicable	\$10,000 - \$14,999	\$15,000 - \$24,999
Examples: First District Bank, Washington, DC; Job - Jones, 1234 St., Washington, DC	Mortgage on rental property, Delaware Promissory note	1991 1990	8% 11%	25 yrs. on demand		
1						
2						
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* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.						
<b>Part II: Agreements or Arrangements</b> Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits. <span style="float: right;">None <input checked="" type="checkbox"/></span>						
Status and Terms of any Agreement or Arrangement		Parties			Date	
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/90.	Doe Jones & Smith, Hometown, State			7/85	
1						
2						
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\* Prior Editions Cannot Be Used.

Reporting Individual's Name <b>FREEMAN, SHA REE</b>		<b>SCHEDULE D</b>		Page Number <b>5</b>																																																							
<b>Part I: Positions Held Outside U.S. Government</b> Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. <div style="text-align: right;">None <input checked="" type="checkbox"/></div>																																																											
<table border="1" style="width: 100%; border-collapse: collapse;"><thead><tr><th colspan="2">Organization (Name and Address)</th><th>Type of Organization</th><th>Position Held</th><th>From (Mo., Yr.)</th><th>To (Mo., Yr.)</th></tr></thead><tbody><tr><td>Examples</td><td>Natl. Assn. of Book Collectors, N.Y., N.Y.</td><td>Non-profit educational</td><td>President</td><td>6/92</td><td>Present</td></tr><tr><td></td><td>Doe Jones &amp; Smith, Hometown, State</td><td>Law firm</td><td>Partner</td><td>7/85</td><td>1/98</td></tr><tr><td>1</td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>2</td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>3</td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>4</td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>5</td><td></td><td></td><td></td><td></td><td></td></tr><tr><td>6</td><td></td><td></td><td></td><td></td><td></td></tr></tbody></table>						Organization (Name and Address)		Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)	Examples	Natl. Assn. of Book Collectors, N.Y., N.Y.	Non-profit educational	President	6/92	Present		Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/98	1						2						3						4						5						6					
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<b>Part II: Compensation in Excess of \$5,000 Paid by One Source</b> Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. <div style="text-align: right;">None <input checked="" type="checkbox"/></div>																																																											
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Prior Editions Cannot Be Used.

Senator EDWARDS. Thank you very much, Ms. Freeman. That was a very impressive statement, and I can tell you that your mother and father would be very, very proud of you today.

Ms. FREEMAN. Thank you, Mr. Chairman.

Senator EDWARDS. Our Chairman has now arrived and I want to give him an opportunity to make a statement or anything he would like to say.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR  
FROM THE STATE OF VERMONT**

Chairman LEAHY. Thank you, Mr. Chairman. I am going to be here for about two minutes and then I am going to have to leave again. Senator Hatch and I have both been on the floor with the terrorism legislation and I need to return shortly.

However, I just wanted to thank Senator Edwards. Senator Hatch and I and our staffs and everybody have been operating under strange situations in the last few days, everybody kind of crowding in my office, which is upstairs. We have one room that looks like a strange action central, with computers and wires and everything else hanging all over the place and everybody pushed together.

Senator Edwards hasn't been able to get into his office and Senator Hatch hasn't been able to get into his in the Dirksen Building, and the Judiciary Committee staff hasn't been able to get back to the Dirksen Building. I think it is a compliment to our staffs to be able to put together all the hearings today, because we could have very easily canceled all of this and everybody would have understood. I compliment the staffs on both sides of the aisle for working hard to get it put together, and Senator Edwards, who is operating everywhere he can find, anything from an empty phone booth to the cloak room.

Senator EDWARDS. The car.

Chairman LEAHY. And the car, that is right. As a matter of fact, I have seen you out there. So it has been a strange thing and I just came by to thank you and Senator Hatch for his cooperation in doing this so we could go forward with these hearings because otherwise they all would have had to be canceled, and with our schedule it would have been hard to get them back. So I thank you all very much.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF  
VERMONT

I begin by thanking Senator Edwards for agreeing to chair this hearing involving judicial nominations. This is an extraordinary time in the Senate. Our Committee offices and hearing room have been unavailable to us for more than a week in the wake of Senate employees testing positive for anthrax exposure. Senator Edwards had not had access to his Senate office over that time. Nonetheless, the Judiciary Committee is seeking to proceed with this hearing today.

This will be the eighth hearing involving judicial nominees since July 10 when the Committee membership was set. This will be the fourth hearing involving judicial nominees since the terrorist attacks on September 11 and the third hearing for judicial nominees this month. Since the Senate was allowed to reorganize, we have maintained a sustained effort to consider judicial and executive branch nominees.

At this hearing we will consider four additional judicial nominees, including one for the Court of Appeals for the 10<sup>th</sup> Circuit, as well as the President's nomination to head the Community Relations Service at the Department of Justice.

This Committee has reported and the Senate has confirmed 12 judges so far this year, including four to the Courts of Appeals. The running total of 12 confirmations as of October 23 this year is well ahead of the pace in the first year of the first Bush Administration, when seven of President George H.W. Bush's judicial nominations had been acted upon, and well ahead of the pace in the first year of the Clinton Administration, when by that date eight of President Clinton's judicial nominees had been confirmed.

Since July, we have already confirmed more Court of Appeals nominees than were confirmed during the first year of the Clinton Administration, more than were confirmed in all of 1996 and, for that matter, more Court of Appeals nominees than were reported by this Committee last year, when only three were reported all year. The Senate is only one Court of Appeals confirmation short of the total achieved in all of 1989, the first year of the first Bush Administration. I have confidence that we will match that record and, with cooperation from all Senators, we can exceed it by the end of the year.

Instead of cooperation, however, we have seen unprecedented obstructionism. The Senate was prevented from proceeding to consideration of the Foreign Operations appropriations bill for three weeks by a Republican filibuster. Republicans twice voted as a block to filibuster proceeding to the appropriations bill that funds our nation's foreign policy. They reversed course late Tuesday. I am glad that the Republican caucus decided to reverse itself.

The Foreign Operations appropriations bill relates to America's security. The bill contains \$5 billion in assistance for Israel, Egypt and Jordan, all critical allies and vital to the prospects of long-term peace and stability in the Middle East. It contains \$175 million to strengthen surveillance and response to outbreaks of infectious diseases overseas, programs that help provide the United States with early warning against some of the world's deadliest infections, including anthrax and other agents used in bioterrorism. It contains \$327 million for non-proliferation and anti-terrorism programs which help foreign countries strengthen the security of their borders as well as programs to get rid of land mines. It contains \$450 million for programs to combat HIV/AIDS, the worst global health crisis in half a millennium. It has \$3.9 billion in military assistance, which includes aid to NATO allies and nations in Eastern Europe and Central Asia. It has \$1 billion in refugee and disaster assistance to deal with humanitarian crises around the world from Afghanistan to Sudan, to help with circumstances that has left millions at risk of starvation, exposure and disease. It has \$856 million in export assistance to help U.S. companies find markets for their products and generate jobs during this economic downturn. It is an important bill, a vital appropriations bill. It is hard to imagine what was gained by the weeks of delay caused by the Republican filibuster.

In addition to the 12 judges confirmed so far this year another seven have participated in hearings and four more will participate today. With this hearing we will have held more hearings involving judicial nominees than were held during the entire first year of the first Bush Administration and more than were held during the entire first year of the Clinton Administration. Thus, despite the upheaval we have experienced this year with the shifts in the Senate majority, the need to focus our attention on responsible action in the fight against international terrorism, and the need to overcome Republican efforts to obstruct the work of the Senate, we are ahead of the pace for hearings and confirmations of judges during the first year of the first Bush Administration and during the first year of the Clinton Administration.

Today we will meet nominees to fill vacancies on the United States Court of Appeals for the 10<sup>th</sup> Circuit and District Courts in Louisiana, New Mexico and the District of Columbia. The 10<sup>th</sup> Circuit is one of many Courts of Appeals with multiple vacancies, and which has had multiple vacancies since before I became Chairman of this Committee this summer. My recollection is that President Clinton had at least two nominees for vacancies on the 10<sup>th</sup> Circuit pending before this Committee in 1999 and for several months last year, but neither ever was accorded a hearing before this Committee or a vote before the Judiciary Committee or before the Senate. Had they been acted upon favorably in years past, of course, the circumstances in the 10<sup>th</sup> Circuit today would not be so dire. I hope that Judge Hartz, who is strongly supported by both Senator Domenici and Senator Bingaman, will meet with approval of this Committee and the Senate had help us finally to send help to the 10<sup>th</sup> Circuit after years of neglect.

Among the District Court nominees, I note that Mr. Bates is nominated to a vacancy that has existed in the District of Columbia since 1996. I recall President Clinton's nomination of James Klein to that vacancy in 1998 and his renomination in 1999. Unfortunately, that nomination was another on which no hearing was ever held and on which no vote of the Committee or the Senate was ever allowed by the

Republican majority. I recall another nominee to a vacancy on that court, Rhonda Fields, who was nominated in 1999 and never received a hearing or vote before the Committee or a vote by the Senate. By contrast, I convened a hearing on the nomination of Reggie Walton to a vacancy on this District Court during the August recess and he has already been confirmed.

The recent vicious attacks on our people have given all of us a heightened awareness of the critical importance of our civil liberties, of the many possible threats to those freedoms, and of the necessity of responding to the challenge of international terrorism without sacrificing what is best about America. This is serious and important work and our federal judges will be a key component in guarding our freedoms. Our system of checks and balances requires that the judicial branch review the acts of the political branches. I want to be confident that the nominees before us today will take this responsibility seriously and will rely on their experience and on our rich history of judicial precedent to make wise decisions in the challenging times ahead.

Senator EDWARDS. Thank you very much, Mr. Chairman, and thank you, by the way, for letting my staff use your office. Very helpful to us.

Ms. Freeman, I just have a couple of questions. I echo what our Chairman said that you are absolutely very well-qualified.

Can you tell me what you believe the top priorities are for CRS?

Ms. FREEMAN. I think the top priorities are going to be trying to balance the work that they were already doing in communities with now the situation that has been created after the September 11 tragedy and the number of attacks and incidents that have happened with our Arabic American, Muslim and Sikh brothers and sisters.

I think all of us are dealing with the load that the September 11 tragedy has put on our offices.

Senator EDWARDS. Actually, you just covered two or three of my questions in that answer because I am concerned about some of the acts of violence we have seen against our Sikh and Muslim, as you say, brothers and sisters.

Tell me what role you see CRS playing in that.

Ms. FREEMAN. CRS has already started, as I understand, an educational program to familiarize and work with some of the other agencies in the Government in terms of customs and cultures of the Arabs, the Sikhs and the Muslim Americans. There has also been a 20-plus-1 pamphlet put out, advising police forces how to deal with and understand better those cultures.

There also is some work, I understand, being done with the Department of Education to put out a brochure for school administrators in dealing with harassment and comments made in school situations. So that is the start and it is a good step in the right direction, I think.

Senator EDWARDS. Tell me what experience you have in the area of mediation and negotiation.

Ms. FREEMAN. I actually look back to my time in the Department of the Interior, in which I worked as the lawyer for the Secretary on negotiating a set of rules that would control how Indian tribes would contract all kinds of programs, which was quite a bit of a back-and-forth struggle in order to figure out what those rules were going to be because we had full-blown negotiated rulemaking. And that was done with 500 or so Indian tribes, with their representatives.

Senator EDWARDS. What about mediation? Have you been involved in mediation?



Ms. FREEMAN. I haven't done that much in terms of mediation.  
 Senator EDWARDS. Is it something you are interested in learning more about as you go forward?

Ms. FREEMAN. Yes, absolutely.

Senator EDWARDS. Good, good. Thank you very much, Ms. Freeman.

Senator Hatch?

**STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Thank you, Ms. Freeman. We are really proud of you and proud of the service you have given. I know Chairman Hyde thinks the world of you, and we all think the world of him as well as you, so I am really pleased to have you here.

I like that quote that your mother gave you. I didn't get it written down, the one about "you must be"—

Ms. FREEMAN. I am sorry, sir.

Senator HATCH. The quote that your mother gave you. Can I remember it? You gave it in your speech.

Ms. FREEMAN. She used to quote Gandhi quite often and she used to tell me, "You must be the change you wish to see in the world."

Senator HATCH. Well, I think that is a great quote, and I just want to write that down because I really enjoyed that.

I notice that you were a Nu Skin distributor at one time.

Ms. FREEMAN. A long time ago, yes, out of Utah.

Senator HATCH. That is one of our companies out there in Utah, yes.

Ms. FREEMAN. There you go.

Senator HATCH. Well, you can't be all bad, then, is all I can say.  
 [Laughter.]

Senator HATCH. I am very proud of you and you will do a great job here. You have tremendous experience.

Ms. FREEMAN. Thank you, Senator.

Senator HATCH. I have been very proud of the way you have come through all of your hardships in life and you have reached this pinnacle of working for Chairman Hyde. He is one of the people I most admire in the whole Congress and I know that he doesn't tolerate fools gladly very often, so you have to be good to work with him. He is about as good as they come around here.

I am just grateful that the administration has chosen you for this position, and I really don't have any questions. I know how good you are and I just want to do everything in my power to help you to be able to fill this position and to continue to expand your horizons and your abilities to serve your country.

Ms. FREEMAN. Thank you, Senator. I look forward to working with you and your staff.

Senator HATCH. Thank you.

Ms. FREEMAN. I am going to miss working with your staff on the other side of the fence.

Senator HATCH. I just want to thank Senator Edwards for chairing this hearing and for the good work he does in our Committee. It meets a lot to me.

Senator EDWARDS. Thank you very much, Senator Hatch.

Thank you, Ms. Freeman. We thank you for the service you have given so far and the service you are going to give.

Ms. FREEMAN. Thank you, Mr. Chairman.

Senator EDWARDS. This hearing is adjourned.

[Whereupon, at 3:43 p.m., the Committee was adjourned.]

[Questions and answers and a submission for the record follow.]

#### QUESTIONS AND ANSWERS

##### **Responses of John D. Bates to questions submitted by Senator Leahy**

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely addressed the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

*Answer:* Stare decisis is a fundamental part of our judicial process. As a District Judge, if confirmed I would strictly adhere to and apply the controlling decisions of the Supreme Court and the D.C. Circuit. Unlike those courts, which have prescribed (but limited) methods for reexamining their prior precedents, the District Court is bound by controlling decisions of superior federal courts.

*Question 3:* I'm sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* Balancing liberty and security in the context of legislation addressing the risks posed by terrorist attacks can present difficult but important issues. It is vital to preserve the protections required by the Constitution even where extraordinary measures to protect our national security and safety are warranted. As a District Judge, I would review such issues carefully and impartially, giving due weight to the deference normally accorded to Congressional judgments and assessments regarding relevant factors and bearing in mind the presumption of constitutionality of Congressional enactments.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* These are important issues involving the confluence of jurisprudence under the Commerce Clause, the Tenth Amendment and the Eleventh Amendment. The evolving developments reflected in the Supreme Court's decisions in these areas may reflect some enhancement of state autonomy and authority. A District Judge is, of course, bound to follow and apply the decisions of the Supreme Court in these as well as other arenas, regardless of the judge's personal views.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* The Supreme Court has recently grappled with this issue under the Fourteenth and Eleventh Amendments in the context of the Age Discrimination in Em-

ployment Act in *Kimel v. Florida Bd. of Regents*, 528 U.S. 62 (2000), and the Americans with Disabilities Act in *Bd. of Trustees of the Univ. of Alabama v. Garrett*, 531 U.S. 955 (2001). As a District Judge, I would attempt to apply carefully, fairly and impartially the “congruence and proportionality” standard established by the Supreme Court were I called upon to review legislation that raised this issue, giving due regard to Congressional assessments of relevant factors within the proper Constitutional framework.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* If Supreme Court has recognized that congress may, consistent with state sovereignty and immunity principles embodied in the Tenth and Eleventh Amendments, use funding incentives to obtain state cooperation in certain contexts, which may in the future be held to include Congressional inducements to states to consent to suits by private parties through offers of federal funding in exchange for the waiver of state immunity from suit. Any legislation in this area should be reviewed carefully by a District Court in appropriate cases through examination of the relevant language of the Constitution and the statute and the application of controlling Supreme Court or Circuit precedent. Such fair and impartial judicial review should also include a careful assessment of the relevant facts, mindful of general principles of deference to Congress’s weighing and balancing of material factors, before any judgment on the constitutionality of a particular funding incentive to the states can properly be rendered.

*Question 7:* Are there any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

I am not aware of any at this time, although I have not been called upon to review, and thus cannot claim to have scrutinized, all possible federal statutes under the pertinent provisions of the Constitution and controlling Supreme Court precedent.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress’ enumerated powers under the Constitution?

*Answer:* I have had no occasion to review, and thus cannot claim to have scrutinized, all possible federal statutes under the pertinent provisions of the Constitution and controlling Supreme Court precedent in order to determine whether any federal statute goes beyond Congress’s enumerated powers under the Constitution. In assessing a specific federal statute or section thereof, a District Court should thoroughly review and analyze the relevant language of the Constitution and the statute and apply controlling Supreme Court and Circuit precedent, while being appropriately reluctant to overturn carefully considered Congressional judgments embodied in legislation.

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#### **Responses of John D. Bates to questions submitted by Senator Durbin**

*Question 1:* Describe your work in the Office of Independent Counsel. What conclusions did you draw about the feasibility of the Independent Counsel Law, since expired? What is your reaction to the widespread consensus, in reaction to Ken Starr’s investigation and others, that the government should not have federal prosecutors who are wholly independent from the Justice Department?

*Answer:* I was detailed to the Office of Independent Counsel from my position as a career Assistant United States Attorney upon the approval of then—United States Attorney Eric Holder and Attorney General Janet Reno. As the Deputy Independent Counsel for the initial stages of the Whitewater Investigation from 1995 through mid-1997, I coordinated and conducted a broad range of criminal investigations involving allegations of obstruction of justice, false statements, perjury, mail and wire fraud, bribery, conflicts of interest, and other possible offenses. This was the “pre-Lewinsky” portion of the Whitewater Independent Counsel investigation. My responsibilities included not only managing large portions of the investigation and the office, but also personal responsibility for certain aspects of the investigation focused on activities in the White House. I had extensive appearances before the Grand Jury as well as other significant criminal investigative experience relating to sensitive issues involving the highest levels of the Executive Branch, and I handled complex issues before the District Court and on appeal. My responsibilities included being

the principal contact with the President's counsel, both his private counsel and the White House Counsel, as well as dealing directly with the Attorney General and her designees and many of the other most significant figures involved in the investigation. I was also principal liaison with both the Senate Whitewater Committee and the relevant House committees.

Although I recognize that there are some countervailing arguments, my view both before and since my experience in the Office of the Independent Counsel has been that the career, professional prosecutors in the Department of Justice (including United States Attorneys' offices) are best suited to handle investigations and prosecutions of possible violations of federal law, including matters within the scope of the since-expired Independent Counsel law.

*Question 2:* Washington, D.C. is one of the locales exempted by law from the requirement that federal judges live within the district in which they serve. Do you think that your place of residence outside the District will affect or possibly inhibit your performance? Do you have any intention of moving to the District?

*Answer:* I have worked in the District of Columbia for virtually my entire professional career (over 25 years), primarily in the Office of the United States Attorney for the District of Columbia serving the country and the citizens of the District of Columbia. That experience, I believe, will significantly enhance my performance as a United States District Judge for the District of Columbia, should I be confirmed, and I do not believe my place of residence just outside the District will adversely affect my performance in any way. My two teen-aged children are deeply rooted and involved in their current public high school experience, which would make it difficult for us to move at this time.

*Question 3:* Please cite examples in your career as a judge or a practitioner that show that you have a demonstrated commitment to equal rights for all and that you are committed to continuing the progress made on civil rights, women's rights, and individual liberties?

*Answer:* I believe my professional experiences are reflective of my commitment to equal rights and the continued advancement of civil rights, women's rights and individual liberties. For example, I have always attempted to find time for appropriate participation in activities serving the disadvantaged, in both my personal and professional lives. While in law school, I worked at Legal Aid. During my brief time in private practice from the fall of 1977 to the spring of 1980, I handled several time-consuming *pro bono* cases. In one, I obtained political asylum in 1979 for a black South African woman who was in legitimate fear of persecution if forced to return to the apartheid conditions existing in South Africa at the time. In another, I assisted in persuading the federal government to change its policy and permit our client to treat a serious medical condition with government-produced and controlled marijuana.

I was in public service with the federal government from 1980 through 1997. Beyond that public service itself, during that period I focused considerable attention on bar activities, including those that supported programs assisting the disadvantaged. I served on the Board of Governors and on several key committees of the District of Columbia Bar and was Chair of the Litigation Section of the Federal Bar Association, in addition to serving both the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia on committees dealing with court rules and procedures.

Since I have been in private practice at Miller & Chevaliers starting in 1998, I have been a leading supporter of our *pro bono* program; for example, I have well over 250 hours of *pro bono* service this year alone. I have also served on the Board of Directors of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. I have personally handled two substantial *pro bono* cases with the Washington Lawyers' Committee involving race discrimination and hostile work environment claims. In the first, we achieved through settlement one of the largest recoveries to that date in an individual discrimination case brought by the Washington Lawyers' Committee. As part of the resolution of the case, the employer agreed to substantial programs and changes in policies that benefit all of the its minority employees. The second case was recently tried in the United States District Court for the District of Maryland, and the jury returned a \$2.4 million judgment for our client, which is the largest individual award ever in any case involving the Washington Lawyers' Committee, and one of the largest awards ever nationally in a case of this kind. These efforts are indicative of my commitment to equal rights and the advancement of civil rights and liberties.

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**Responses of Kurt D. Engelhardt to questions submitted by Senator Leahy****PUBLIC QUESTIONS**

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that the background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

*Answer:* The doctrine of stare decisis is the fundamental bedrock of our system of justice. In order for not only the Bar, but also our citizenry to appreciate the law and adjust our conduct accordingly, there must be a certain degree of predictability, which comes from the doctrine of stare decisis. Indeed, the ability to follow precedent is an important characteristic of a good judge. I do not believe that the commitment to stare decisis should vary depending on the court, but rather is a concept that permeates our system of justice. If confirmed, I will follow the precedent of the Fifth Circuit and the U.S. Supreme Court.

*Question 3:* I'm sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* Although I am aware of the important debate of the recent anti-terrorism bill on Capitol Hill, I am not privy to the particular arguments for and against the provisions of that bill. Of course, as Americans, we greatly value the liberties which have been protected and handed down through the years. On the other hand, one of the primary obligations of our federal government is to ensure our security. Hence, the "trade-off" as reflected in the recent anti-terrorism bill is not an issue to be taken lightly, however, as a judicial nominee, I do not have a particular opinion of what the trade-off should be, but will respect the intentions of Congress as reflected in its legislation, and will afford such legislation the strong presumption of constitutionality. If confirmed, I will follow the precedent of the Fifth Circuit and the U.S. Supreme Court.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* I have viewed these developments with great interest, as this is obviously an evolving area of the law of critical importance. I would assume my duties as district court judge with the strong presumption of the constitutionality of all Congressional enactments. Moreover, Supreme Court jurisprudence reflects that some areas of our society must be subject to federal regulation in order to be effective, while respect must be given to the authority of the states in other areas. If confirmed, I am duty-bound to follow the Supreme Court's rulings on this and any other issues, and will do so.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* Congress has the authority to subject non-consenting states to suit pursuant to a valid exercise of its power under Section 5 of the Fourteenth Amendment, under existing Supreme Court precedent governing this issue. Moreover, private individuals may recover damages from a state, under circumstances wherein a pattern of discrimination by a state exists in violation of the Fourteenth Amendment.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* Congress may exercise its power under the spending clause to place restrictions or obligations on states that choose to accept federal funding. The Supreme Court has touched upon this issue in *South Dakota v. Dole*, 483 U.S. 203 (1987). If confirmed, I will follow the Supreme Court precedent in this area.

*Question 7:* Are these any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* I have not undertaken a review of any particular federal statutes or sections thereof with the intent to formulate such an opinion, and I, as a district court nominee, would be reluctant to offer such an opinion when a case involving such issue might be presented to me as a district court judge. Moreover, I believe that this questions presents a constitutional issue which will ultimately be addressed by the Supreme Court, and which ruling I as a district court judge am prepared to follow, and remain duty-bound to follow.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress' enumerated powers under the Constitution?

*Answer:* Federal statutes enacted by Congress and signed into law by the President have a strong presumption of constitutionality, and I am unaware of any such statutes that go beyond Congress's enumerated powers, except those which have already been deemed unconstitutional. As to those holdings, I fully intend to follow the controlling authority of the U.S. Supreme Court and the U.S. Fifth Circuit.

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#### **Responses of Kurt D. Engelhardt to questions submitted by Senator Durbin**

*Question 1:* According to your questionnaire, you are a member of Louisiana Lawyers for Life. What is the extent of your involvement? What efforts have you undertaken to promote the goals of the pro-life movement?

*Answer:* My membership in Louisiana Lawyers for Life consists of paying \$25.00 per year in order to be a member. The group meets on an occasional basis, perhaps two or three times a year. I have never been to a meeting. I hold no officership, directorship, or any other positions with the organization, except for my membership. Thus, the extent of my involvement has been payment of annual dues in order to maintain membership.

Aside from my membership in Louisiana Lawyers for Life, I have not been involved in any litigation surrounding the issue of the pro-life/pro-choice debate. Accordingly, I have personally not undertaken any efforts to promote the goals of the pro-life movement, nor with regard to the issue in general.

In connection with my nomination and prospective confirmation, I have recently resigned my membership in Louisiana Lawyers for Life, as I think it appropriate under the Code of Judicial Conduct to avoid even the appearance of an affiliation with any particular group which might be identified with one side or another of any particular issue.

*Question 2:* Do you agree with the Supreme Court's decisions in *Griswold v. Connecticut*, *Roe v. Wade*, and *Planned Parenthood v. Casey*? Do you agree that the doctrine of stare decisis counseled the Court against overruling *Roe* in 1989. As a judge, would you be able to apply the law as it stands now, including the constitutionally recognized right to terminate an unwanted pregnancy?

*Answer:* I agree that the Supreme Court's decisions in *Griswold v. Connecticut*, *Roe v. Wade*, and *Planned Parenthood v. Casey* are well-settled law as enunciated by the Supreme Court. I further agree that the doctrine of stare decisis counseled the Court against overruling *Roe* 1989, thus reaffirming the correctness of those decisions. If confirmed as a district court judge, I will, without reservation, apply the law as enunciated by the Supreme Court, in all respects, including the constitutionally-recognized rights set forth in *Griswold*, *Roe* and *Casey*. As a district court

judge, I am duty-bound and ethically-bound to follow superior authority from the U.S. Supreme Court, as well as the U.S. Fifth Circuit, on this issue and any others.

*Question 3:* Please cite examples in your career as a lawyer that show that you have a demonstrated commitment to equal rights for all and that you are committed to continuing the progress made on civil rights, women's rights, and individual liberties?

*Answer:* In my career as a lawyer, my most exposure regarding equal rights would come in connection with the Americans with Disabilities Act. As I indicated in my Senate Questionnaire, I have been involved in negotiating with the local public school board to afford disabled students equal opportunity in the school system. I have represented numerous parents of disabled children in that endeavor, many on a pro bono basis.

In addition, I have supported my law firm's efforts to seek out and hire qualified minority attorneys. In addition, my personal clientele includes several minority business owners and individuals. I have represented an African-American client in the real estate business with regard to discrimination in a fair housing issue, vis-a-vis the local municipal authorities. He is a regular client of mine of other issues.

With regard to women's rights, I and other members of my firm have had the opportunity to confer with clients regarding discrimination in the workplace, and to assist corporate clients in developing and establishing appropriate guidelines to make the workplace comfortable and acceptable to women, including payment of equal wages and other benefits for similar work, and removal of other workers whose behavior did not respect the rights of women to participate in the workplace.

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### Responses of Harris L. Hartz to questions submitted by Senator Leahy

#### PUBLIC QUESTIONS

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for in this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of *stare decisis*? Does the commitment to share *decisis* vary depending on the court?

*Answer:* Respect for *stare decisis* is essential to the proper functioning of a well-ordered society. Lower courts must be scrupulous in complying with precedents handed down by superior courts. And panels of appellate courts should not overturn decisions of prior panels—such overruling should occur only after en banc consideration. Although there may be occasions when a court should set aside its own precedents, those occasions are rare.

*Question 3:* I'm sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* Our nation has the right of self-preservation. But that right does not require the abrogation of civil liberties. On various occasions civil liberties have been unnecessarily infringed in the name of national security. All branches of the government must take great care before deciding the national security justifies a particular restriction on a liberty interest that would otherwise be recognized.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new au-

thority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a “new federalism” crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* The Supreme Court’s decisions certainly bear upon the balance of power between state governments and the federal government. As an appellate judge, my role would not be to evaluate the merits of the decisions but only to apply them with the great care that the importance of the subject demands.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* Recent decisions of the United States Supreme Court concerning state sovereign immunity (such as the *Seminole Tribe* case) and the scope of Congressional authority under the Fourteenth Amendment (such as *City of Boerne*) will have a significant impact on how courts analyze this issue. As an appellate judge, my duty would be to begin with the presumption of constitutionality afforded all federal statutes and then determine whether that presumption has been overcome in light of applicable precedents of the United States Supreme Court.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* As recognized by the United States Supreme Court in *South Dakota v. Dole*, Congress can use its spending power to induce action by the states that Congress cannot directly. The Supreme Court has, however, recognized some limitations on this power. Whether a particular exercise of such power is constitutional would depend on the specifics of the statute involved and the application of Supreme Court precedent, always giving the deference to Congress provided by the presumption of constitutionality.

*Question 7:* Are these any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* There are thousands of federal statutes, and I am not familiar with most of them. All are presumed constitutional. As a judge, I would need to consider the specifics of each statute and rule it unconstitutional only if Supreme Court precedents made clear that the presumption of constitutionality had been overcome.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress’ enumerated powers under the Constitution?

*Answer:* Again, there are a great many federal statutes, and I have had occasion to become familiar with only a small fraction of the total. Judges must presume that each federal statute was enacted within the bounds of Congress’ constitutional authority. As a judge of the court of appeals, my duty would be to uphold the statute unless the precedents of the United States Supreme Court compel a ruling that the presumption of constitutionality has been overcome.

*Question 9:* In 1972, you wrote an article for the Harvard Law Review entitled “Health Regulation of Naturally Hazardous Foods: The FDA Ban on Swordfish.” In this article, you argued that the Food and Drug Administration had gone too far in its 1970 action of removing swordfish from commercial markets after two weeks of FDA testing had shown higher than recommended methyl mercury levels in the food. You equated this action to a “ban” that destroyed the industry and, while acknowledging that FDA acted within the law, strongly argued that FDA should have gone through a formal, public rulemaking on swordfish mercury tolerances rather than adjudicate the issue in private meetings. You also noted that, except in emergency situations, the FDA should fully educate consumers about any food risks—possibly with warning labels such as those on tobacco—but ultimately give them the final choice about whether or not to consume certain foods.

I agree with you that FDA, and all other regulatory agencies, should fully educate consumers about the risks of products. I also agree that warning labels would be a good interim effort for many consumables.

Yet, based on your writing in this case, I am interested in what you consider the standards of evidence needed for an agency to implement protective regulation on consumer products. While you believe the FDA went too far in the swordfish case of 1970, I would argue that the agency has not yet gone far enough. FDA’s own records show that the agency stopped monitoring domestically-caught seafood for mercury contamination in 1998 despite the fact that their own 1997 data shows that



several samples of domestically-caught tuna, swordfish, and shark exceeded their own action level.”

(A) During the past 30 years, how do you think the legal and regulatory system could have provided sensitive populations with better protection from harmful methyl mercury levels in seafood?

(B) Where might you set evidence standards today for regulating a possible-harmful contaminant in consumable products?

(C) How would you try to balance the concerns of a possibly-harmful contaminant in a consumable product against industry pressures to keep a product on the market until all scientific studies have been completed?

*Answer:* The law review article was written by another student. My role was to edit the article. The views expressed are those of the author and are not necessarily the views of the editor or of the *Harvard Law Review* itself. Regulation of potentially dangerous food is a matter of the highest importance. But I have had very little occasion to think carefully about the subject during the past 30 years, so any position I expressed now would be much closer to a tentative guess than a well-considered view.

#### **Responses of Harris L. Hartz to questions submitted by Senator Durbin**

*Question 1:* During your tenure as a judge in New Mexico, you were appointed by the Governor, you were retained by the voters, and you ran in a partisan election. The federal judiciary is quite different in its selection process. What lessons do you draw from your first hand experience as an elected judge? If confirmed, how will your life tenure affect your judicial outlook?

*Answer:* I have thought a great deal about the process of selecting judges, although I have not reached any firm conclusions. Election of judges may make judges more responsive to the views of the electorate, but that is not always good. My greatest concern about election of judges is the election process itself. Fund raising can, at the least, create cynicism about how judges decide cases; and judges are pressed opinions on matters that may well come before them. Perhaps most importantly, many men and women who would make excellent judges are unwilling to campaign for office.

As for the effect on me personally, I do not think the manner of selection influenced my work as a judge. I did my best to exercise sufficient self-discipline to keep political interests from affecting my decisions. As a federal judge, I hope (and expect) to maintain that self-discipline; given life tenure, that task should be easier than it was on an elected state court.

*Question 2:* Please describe your recent work for the Teamsters Union. Do you feel that you have had success in helping to reform that institution and rid it of corruption? Have you completed your assignment?

*Answer:* Although the project I have been working on included some efforts to attack remnants of corruption in the Teamsters Union, my own efforts have focused almost entirely on the future. In my view, the fundamental task of ending the influence of organized crime on the union is essentially complete. In such a large institution there will always be some miscreants, but the present Teamsters leadership is committed to running a clean union.

My role has been to work with a 22-member Teamster task force to create a code of conduct and a system for compliance and enforcement so that future attempted encroachments by organized crime and other systemic corruption will be thwarted. I am very proud of the code and system that has emerged from our work. Once they are implemented, the Teamsters will be a model for integrity within the labor movement. There is still plenty of work to do in coordinating with the Justice department and instituting the Task Force's plan, but I have no doubt that this work can be done quite well without my further involvement.

*Question 3:* Please cite examples in your career as a judge or a practitioner that show that you have a demonstrated commitment to equal rights for all and that you are committed to continuing the progress made on civil rights, women's rights, and individual liberties?

*Answer:* As a first-year law student I worked with the law school's Voluntary Defenders and then joined the first group in the Prisoner Legal Assistance Project. Those experiences taught me that the best way to protect civil liberties was to be a government lawyer who respected the law. As a result, my first job was not as a public defender but as an assistant U.S. Attorney. Later, I served with the New

Mexico Governor's Organized Crime Prevention Commission and the New Mexico State Racing Commission. I am proud that in each of those jobs I aggressively protected the public interest while being scrupulous in observing the rights of those being investigated or prosecuted.

In my capacity as a judge, I endeavored to keep my personal views from influencing my decision-making. But I believe that my record shows a clear respect for civil rights, women's rights, and individual liberties. New Mexico is a wonderfully diverse state. I am proud that in each of my campaigns for judicial office I received strong support from leaders in the Hispanic, Black, and Native American communities within the state; and women were the backbone of my campaign support.

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**Response of Harris L. Hartz to a question submitted by Senator Edwards**

*Question 1:* Shortly after your appointment to the Court of Appeals, you sensitively commented that "what struck me most is that on the Court of Appeals, we make law every day. . . . There's no way to get around it." Last week, at your hearing, I asked you how you would construe broad constitutional guarantees like "equal protection." You answered that the Supreme Court must make those kinds of "very difficult" interpretive decisions; you would simply "follow the approach taken" by the Supreme Court.

In "making law every day," do you think that a court of appeals judge can follow the Supreme Court approach and nothing more? And would you care to elaborate on your answer to my question—do guarantees like "equal protection" stand for general principles that judges have leeway in articulating, or do those guarantees instead embody their framers' specific intentions and expectations?

*Answer:* When I made the quoted comment early in my judicial career, I suspect that I was simply reacting to the surprising number of undecided issues that came before the state court of appeals. I do not believe that a judge should "make law" in the sense of imposing his or her personal policy preferences in resolving the issues presented in a case. Reliance on personal policy preferences is not only improper, it is also unnecessary. When novel issues arise, judges are not writing on a blank slate. They must carefully study the pertinent texts and judicial precedents. In my experience as an appellate judge, such study provides sufficient guidance to determine the decision.

I am aware of the continuing debate regarding the generality with which constitutional language should be interpreted. But numerous opinions of the Supreme Court have addressed the various provisions, so a federal appellate judge would receive considerable guidance in resolving constitutional questions ranging from the scope of the Equal Protection Clause to the extent of the right of confrontation in criminal trials. My statement that I would follow the approach taken by the Supreme Court was intended to convey that I would endeavor to apply the reasoning of Supreme Court precedents rather than imposing any personal view I may have regarding how to interpret the Constitution.

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**Responses of William P. Johnson to questions submitted by Senator Durbin**

*Question 1:* You have spent the last six years as a trial judge in the New Mexico state judiciary. Based on that experience, how would you assess the quality of legal representation provided to indigent criminal defendants? As a judge, what steps have you taken to assure that all defendants received competent counsel? If confirmed as a federal judge, what steps would you take in the future?

*Answer:* I am a district judge in New Mexico's Fifth Judicial District which comprises the three counties in Southeastern New Mexico. Chaves County, the county in which I sit, has a very high crime rate and so the District attorney's office ends up filing a lot of felony cases. I share the Chaves County criminal docket with two other judges and the three of us meet routinely to discuss case management and docket control issues in order to maintain a consistent and uniform approach for the criminal docket. If there is an issue regarding representation of indigent criminal defendants, then the three judges usually act in concert and this has the advantage of not pitting one judge against a particular attorney. For example, there was concern amongst the judges that the public defenders were not meeting frequently enough with their clients in the detention center and that defendants were not reviewing their plea agreement paperwork well enough in advance of court hearings

to make a truly informed decision whether to accept the plea agreement. The judges met with the public defender supervisor and implemented a uniform policy where no pleas would be accepted unless the defense attorney had met with his or her client outside of the courtroom and in advance of the plea hearing. Other issues the three judges have dealt with collectively concerned expanding the attorney visitation hours at the detention center, establishing uniform procedures and guidelines for setting bail and conditions of release, developing alternatives to detention and community service for misdemeanor defendants and expanding the availability of substance abuse treatment programs.

The Sixth Amendment right to counsel for a criminal defendant includes effective assistance of counsel and the trial judge has the duty to ensure that a criminal defendant is afforded his Sixth Amendment right to counsel. If I am confirmed by the Senate and become a federal judge, then I will work with the other judges, the Clerk of the Court, the U.S. Marshal and the federal public defender to ensure that the necessary resources are devoted to criminal cases so that due process is afforded to all criminal defendants.

*Question 2:* You are a graduate of the Virginia Military Institute. What is your opinion of the Supreme Court's decision in *Virginia v. United States*, requiring that VMI cease its practice of excluding women cadets? Do you agree with the Court's reasoning?

*Answer:* I made the decision to attend the Virginia Military Institute ("VMI") in the fall of 1976 when I was seventeen years old and in my senior year of high school. I chose VMI because the school was founded on the concept of the citizen soldier which appealed to me and because of the unique aspects of the VMI educational experience. VMI's all-male admissions policy if anything was a factor against attending VMI; however, the fact that my father was a VMI graduate and the fact that there are several all-female colleges in close proximity to VMI negated what I perceived in 1976 as disadvantages of VMI's all-male admissions policy.

Last April, I had the occasion to go to VMI to attend my 20<sup>th</sup> class reunion. From all accounts and from my own observations, VMI has made the transition to co-education as demonstrated by the number of female cadets who have earned rank and other positions. Applications for admission to VMI have increased and I recently received a letter from VMI's Superintendent mailed to all alumni expressing pride in how VMI scored in the U.S. News & World Report's Annual Survey on Colleges and Universities. Finally, if I am confirmed then I will follow Supreme Court precedent in the VMI case and all other Supreme Court and applicable circuit precedent.

*Question 3:* Please cite examples in your career as a judge or a practitioner that show that you have a demonstrated commitment to equal rights for all.

*Answer:* During my years in private practice and as a judge, I have devoted a significant amount of my time and effort in helping disadvantaged or at-risk youth. In 1987, I accepted a pro bono appointment for an abused and neglected child as her guardian ad litem. I was a commercial litigator at the time and was accustomed to litigating on behalf of an against large corporations which were represented by very effective counsel. I was shocked over what I felt was a lack of resources devoted to helping abused and neglected children. This experience prompted me to become involved in organizations that help at-risk or disadvantaged youth and I have been involved with the following organizations:

#### A. CHAVES COUNTY CASA PROGRAM

CASA stands for court appointed special advocate and a CASA is a trained volunteer who advocates for and assists the child's attorney in child abuse and neglect cases. The Chaves County CASA Program, a non-profit entity, was formed in 1988 and I helped form the Board of Directors and served on the Board from 1988 to 1994 in the capacity of Board Chairman, Vice-Chairman and Member. The Chaves County CASA Program has expanded from not only advocating for children in abuse and neglect cases, but also advocating for children in domestic violence, juvenile delinquency and domestic relations cases.

#### B. JUVENILE JUSTICE ADVISORY COMMITTEE ("JJAC")

The New Mexico JJAC as created by statute and the members are appointed by the Governor. I served on JJAC from March of 1995 until October of 2001 as a member and as Vice-Chairman. Under the Federal Juvenile Justice Act, each state receives certain federal funds to be disbursed by each state through grant funding for juvenile delinquency and prevention grants. In New Mexico, JJAC is the entity which awards units of local government grant awards for delinquency prevention and intervention initiatives. During the time I served on JJAC, the members devel-

oped a strategy of funding communities that were committed to building a continuum of services for at-risk youth.

CAMP SIERRA BLANCA ("CSB") AND ASSOCIATED MARINE INSTITUTES ("AMI")

In 1997, CSB was formed as a non-profit organization whose mission is to help delinquent male youth develop into responsible, productive citizens through a disciplined, value oriented and supportive learning environment. I was recruited to serve as CSB's Board Chairman and have served in that capacity from November of 1997 until the present. AMI, a non-profit organization headquartered in Tampa, Florida, operates CSB pursuant to a contract with the State of New Mexico which requires CSB to provide residential programming for 50 adjudicated, non-violent delinquent male youth, ages 14 to 18. Residents stay at the program from six to twelve months. CSB is an accredited high school and residents can earn their GED. Since CSB opened up in August of 1997, 18 residents earned their high school diploma and 112 residents earned their GED. The three year recidivism study showed that 80% of the residents who left CSB did not re-enter the juvenile justice system. The three year recidivism study also showed that for the first three years of CSB's operation, 56% of the residents were Hispanic, 6% were African-American, 14% were Native American, 22% were Caucasian and 2% were other races or ethnicities. During my tenure as CSB Board Chairman, I served as the Vice-Chairman of the AMI Program Development Committee. During this time, AMI opened up the Wings Program in San Antonio, Texas for delinquent female youth who are pregnant and give birth to children while in custody of the Texas Agency which houses delinquent female youth. This program is designed to allow delinquent teen mothers to bond with their children, go to school and learn parenting skills while they are serving their juvenile sentence.

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**Responses of William P. Johnson to questions submitted by Senator Leahy**

*Question 1:* Please state whether you have ever been arrested for, charged with, or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition, and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation ("FBI") routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

*Answer:* Federal district judges must strongly bind themselves to the doctrine of stare decisis, as the trial judge has the duty to apply the law enacted by the Congress and to follow Supreme Court and precedent of the circuit in which the trial judge sits. Circuit judges likewise must follow Supreme Court and precedent of the circuit precedent. While the doctrine of stare decisis is equally important to the Supreme Court, it is the final authority on interpretation of the Constitution and may depart from or overrule established precedent.

*Question 3:* I'm sure that you have followed debate here on Capitol Hill and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-off needs to be between liberty and security?

*Answer:* On September 11, 2001, over 6,000 Americans and citizens of other countries were viciously killed in terrorists attacks associated with the hijacking of four commercial airplanes. Since September 11<sup>th</sup>, various entities and institutions of government including all three branches of government have come under biological attack through anthrax contaminated mail. Part of the response to all of these attacks included the President proposing and the Congress recently enacting anti-terrorism legislation which the President has now signed into law. While I am not familiar with the specific provisions of the anti-terrorism legislation, as an act of Congress the legislation is presumptively constitutional. The President and the Congress have the power to take actions to protect this Country and its citizens even if such actions result in the curtailment of some of the freedoms Americans enjoy provided

that such actions do not violate the fundamental liberties provided by the Constitution. The Congress is uniquely situated to evaluate the appropriate balance between liberty and security in evaluating legislation.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress' power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably, in the environmental arena, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* The Constitution in all its brilliance created the three branches of government with a system of checks and balances that has and continues to serve this Nation. I strongly believe in the concept of separation of powers and if I am fortunate enough to be confirmed by the Senate as a federal district judge, I can assure you and your distinguished colleagues that I would have the utmost respect for the work of the Congress. Legislation enacted by the Congress is the product of hard work by both chambers of the Congress often occurring after lengthy public hearings and public debate. Legislation enacted by the Congress is presumptively constitutional and I believe the role of a district judge is to apply the law as enacted by the Congress and to follow precedent of the Supreme Court and precedent of the circuit in which the district judge sits.

*Question 5:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* Under current Supreme Court precedent, Congress may, under Section five of the Fourteenth Amendment, enact legislation that override states' sovereign immunity provided there is a "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne v. Flores*, 521 U.S. 507, 521 (1997). The Supreme Court has held that states are immune from state employees' age discrimination and Americans with Disabilities Act lawsuits although age and disabilities are not suspect classes entitled to "strict scrutiny." With regard to other classifications, such as gender that have been held not to be suspect classes entitled to "strict scrutiny," I am not aware of Supreme Court precedent as this question posed and thus am reluctant to state an opinion on an issue that could come before me as federal district judge if I am fortunate enough to be confirmed by the Senate.

*Question 6:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* Congress may include the states to consent to suit by offering them federal funds in exchange for the states' waiver of sovereign immunity provided that the federal statute is consistent with the Supreme Court's spending clause jurisprudence, although historically any such waiver has been limited to remedies such as injunctive or declaratory relief as opposed to monetary damages. I am not aware of any prohibition against the Congress offering the states federal funds in exchange for a waiver of sovereign immunity to private actions for money damages if states misuse such funds although resolution of this issue will require further guidance from the Supreme Court.

*Question 7:* Are these any federal statutes, or sections thereof, concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* Question 7 asks if there are any federal statutes or sections thereof of which the Supreme Court has not yet ruled that violate the Eleventh Amendment. If I am fortunate enough to be confirmed by the Senate and become a federal district judge, I will follow Supreme Court precedent and circuit precedent from the circuit in which I sit. I am, however, reluctant to offer an advisory opinion on matters that could possibly come before me or could come before the Supreme Court. Additionally, if confirmed, I would faithfully apply the presumption of constitutionality accorded to any act of Congress under the law.

*Question 8:* Are there any federal statutes, or actions thereof, that go beyond Congress' enumerated powers under the Constitution?

*Answer:* There are literally thousands and thousands of federal statutes or sections thereof the constitutionality of which has never been challenged. When Congress enacts a federal statute, there is a presumption in favor of its constitutionality. If I am fortunate enough to be confirmed by the Senate and become a federal district judge, I will follow Supreme Court precedent and circuit precedent from the circuit in which I sit. I am, however, reluctant to offer an advisory opinion on matters that could possibly come before me or could come before the Supreme Court.

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#### SUBMISSION FOR THE RECORD

##### **Statement of Hon. Richard J. Durbin, a U.S. Senator from the State of Illinois**

Thank you, Mr. Chairman. I have a few brief remarks. I want to thank you for chairing this hearing, and thank the nominees for traveling out here at a time when many people would probably prefer to simply stay home. Terrorists, whether international or home grown, are clearly trying to disrupt the workings of our government. It is important that we send a signal that the business of the people of the United States will continue as before.

Today marks the third judicial nominations hearing this month. It is a rather extraordinary event, because only twelve times in a recent span of over six years did this Committee hold as many as two hearings in the same month. Since the Democrats assumed control of the Senate, the Committee has held multiple hearings on judicial nominations in July, within days of taking over; in August, when the Senate was in recess and none of the President's nominations were pending before it; and in October, when the building that houses the Committee offices and hearing room was closed. Chairman Leahy has demonstrated impressive resolve in moving forward with judicial nominations.

Today also marks the eighth judicial nominations hearings this year. That is an extraordinary achievement, more hearings than were held in 1989 and 1993, the first years of the elder President Bush's term and President Clinton's term. It is even more extraordinary when one considers that all eight of these hearings have occurred since July, when the Democrats assumed control; that these hearings continued even while this Committee consumed with work on anti-terrorism legislation in response to the September 11 attacks; and that these hearings continue today even while our offices and hearing room have been quarantined for over a week.

Today's judicial nominees are an example of the type of selections we would like to see more of. They are individuals of real experience and accomplishment. They enjoy widespread bipartisan support. They are not ideologues, bent on frustrating the popular will and imposing a stilted form of federalism on the American people. I look forward to hearing from them.

I also look forward to hearing from Sharee Freeman, the President's choice to head the Community Relations Service. That office has played an important role since its creation in 1964, mediating racial and ethnic conflicts that have afflicted local communities. The employees of CRS bring experience and expertise to bear, as well as an outside perspective that is often crucial to resolving long-simmering disputes. Off course, it is unfortunate that the services of CRS are still very much in demand, even in the wake of September 11. But I am confident that Ms. Freeman is committed to the mission of the office.

**NOMINATION OF JULIE A. ROBINSON, OF KANSAS, TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS; JOE L. HEATON, OF OKLAHOMA, TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA; CLAY D. LAND, OF GEORGIA, TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA; FREDERICK J. MARTONE, OF ARIZONA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; DANNY C. REEVES, OF KENTUCKY, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY; AND JAMES E. ROGAN, OF CALIFORNIA, TO BE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE**

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**WEDNESDAY, NOVEMBER 7, 2001**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:05 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senators Feinstein, Leahy, Hatch, Kyl, Brownback, and McConnell.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Good morning, everyone. This hearing of the Judiciary Committee will come to order.

I am delighted that we have so many distinguished Senators here. I am informed that we will go down the line in strict seniority, so if I may just indicate what that is, it is Senator Nickles, if he is present, first, Senator Inhofe second, Senator McConnell third, Senator Bunning fourth, Senator Kyl fifth, Senator

Brownback sixth, and Senator Roberts seventh, Senator Cleland eighth, and Senator Miller ninth. So we will follow that order unless I hear objection from someone on the Committee. Hearing none, we will proceed.

Is Senator Nickles present? He is not. Senator Inhofe?

**PRESENTATION OF JOE L. HEATON, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA BY HON. JAMES INHOFE, A U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Madam Chairman. I think it is the first time since 1994 that I have gone first by seniority, so I am not used to that.

Senator FEINSTEIN. Time marches on.

Senator INHOFE. That is right.

Senator MCCONNELL. That first ten years I was here really did not count.

Senator INHOFE. Yes, that is right. I was thinking about that, too. Anyway, I will be glad to defer to you, Senator McConnell.

Senator MCCONNELL. No, go ahead.

Senator INHOFE. Let me just briefly say that quite often, Madam Chairman, when the Senators have this perfunctory, sometimes obligation, sometimes privilege to present someone for the bench, it is more of a duty. In this case, this is one that it is a real honor for me because this guy that I used to call this young guy was Joe Heaton, who is right behind me here.

I can remember the first time I met him. I was in the State Senate of Oklahoma and I was asked to attend an event where they honored the outstanding students at a school that is called Northwestern Oklahoma State University, where he was recognized as the outstanding business and professional graduate of that school, and I knew a lot of people who knew him and everyone said he was going to have a great future in law and in the courts.

In 1976, he was here in Washington. We were talking about how it has changed since then. But he was here working for Senator Dewey Bartlett. Senator Dewey Bartlett was actually the reason I got involved in politics in the first place, when he ran and created a vacancy and I ended up running. At that time, there was a good friend of mine in Oklahoma who was a Federal judge. His name is Ralph Thompson. Ralph Thompson said he really believed that this young man who was working for Dewey Bartlett by the name of Joe Heaton has the intelligence and temperament to be a really great judge someday.

So he got involved in the Western District of Oklahoma at a very early age with the U.S. Attorney's Office. He served as Special Assistant to the U.S. Attorney. He held the position for quite a number of years. He also had other positions in the Western District. Early on, he served as the Chairman of the Civil Justice Advisory Committee for the U.S. District Court for the Western District of Oklahoma, so he is very familiar with that district and he was nominated by the President to be the District Court Judge for the Western District of Oklahoma and I am here today to introduce him to you and heartily recommend him as someone who is a great find and is going to have a great future of service for his country.



Senator FEINSTEIN. Thank you very much, Senator Inhofe. I appreciate those comments.

Let me correct my prior statement, because I look at this list and as Senator Kyl just reminded me, the seniority list needs to be revised.

Senator INHOFE. Let me remind you, Madam Chairman, I have three days' seniority over Senator Kyl.

Senator FEINSTEIN. And you will not let him live it down.

[Laughter.]

Senator FEINSTEIN. Senator McConnell, you are speaking on behalf of—

Senator MCCONNELL. Judge Reeves, or Judge-to-be Reeves.

Senator FEINSTEIN. Why do you not go ahead, if you do not mind.

**PRESENTATION OF DANNY C. REEVES, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY BY HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

Senator MCCONNELL. Thank you, Madam Chairman. It is my pleasure to introduce to the Committee Danny C. Reeves, President Bush's nominee for a seat on the U.S. District Court for the Eastern District of Kentucky. Danny is a well respected lawyer in our State and possesses the legal experience, character, and personal qualities that will enable him to be an outstanding Federal jurist.

He grew up in Southeastern Kentucky and demonstrated his strong work ethic early on by putting himself through both college and law school. He graduated with honors from Eastern Kentucky University in just three years and received his law degree from Salmon P. Chase College of Law.

After law school, Danny clerked for two years with Judge Eugene Siler when Judge Siler was on the U.S. District Court for the Eastern and Western Districts of Kentucky. Judge Siler, who now sits on the U.S. Court of Appeals for the Sixth Circuit, was one of Kentucky's most respected trial judges. No doubt the insight and experience Danny gained from Judge Siler were invaluable.

Danny then joined Greenebaum, Doll and McDonald, one of Kentucky's largest and most prestigious law firms. He became a partner in 1988 and has distinguished himself in private practice, representing companies such as Ashland Oil and Newport Steel in major commercial litigation and representing the Kentucky High School Athletic Association in a whole range of matters.

Danny's peers have recognized his sound judgment and have trusted him with important responsibilities in several legal organizations in Kentucky. He served on the Kentucky Bar Association Judicial Concerns Commission, which makes recommendations to the KBA on various administrative issues, including questions regarding the selection and retention process for State judges. For five years, he was an officer of the Kentucky Chapter of the Federal Bar Association, including serving as its President.

So, Madam Chairman, Danny Reeves is an accomplished litigator with extensive Federal Court litigation experience. He possesses a sound legal mind and is held in high regard by the judges in the Eastern District with whom he has worked and before whom he has practiced. He will be a valuable addition to the Federal Court

in Eastern Kentucky and I am confident he will serve with distinction. I enthusiastically support his nomination and commend President Bush on an outstanding choice.

Senator FEINSTEIN. Thank you very much, Senator McConnell.

Senator Nickles, would you like to proceed at this time.

**PRESENTATION OF JOE L. HEATON, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA BY HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator NICKLES. Madam Chairman, thank you very much, and I appreciate your conducting this hearing and appreciate my colleague, Senator Inhofe, introducing my friend, Joe Heaton, nominee to be the Western District Court judge in Oklahoma.

I have had the pleasure of knowing Joe Heaton for a long time. He served in the Oklahoma House of Representatives for several years, eight years, I believe, including ten years as assistant and also as minority leader. He did an outstanding job in that capacity. It was my pleasure to recommend that he be U.S. Attorney for the Western District back in 1992 and he did a fantastic job in that capacity. He has also served for the last several years as First Assistant U.S. Attorney for the Western District. In addition to that, he has had several years in private practice.

He is well regarded in the legal community. He has done an outstanding job in the U.S. Attorney's office, both as U.S. Attorney and First Assistant, and I am very confident that he will do an outstanding job as a Federal District Court Judge for the Western District of the State of Oklahoma.

I would, one, thank the Committee for having this hearing. I urge you to move forward as quickly as possible and thank you for doing that. I have every confidence that Joe Heaton will make an outstanding Federal District Court Judge for the State of Oklahoma.

Senator FEINSTEIN. Thanks very much, Senator Nickles. I appreciate that you took the time to be here.

We will now go to Senator Bunning, also on behalf of Mr. Reeves.

**PRESENTATION OF DANNY C. REEVES, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY BY HON. JIM BUNNING, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

Senator BUNNING. Madam Chairman, I am pleased to join Senator McConnell in introducing Danny Reeves to the Committee. Earlier this year, we recommended Danny to fill one of the vacancies in the Eastern District and we are proud that the President saw fit to nominate him.

Danny is a Kentucky native, born and bred. He grew up in Eastern Kentucky and went to school at Chase Law School in Northern Kentucky. Later, he clerked in the Eastern District for one of our finest judges ever, Gene Siler. Since then, over the past 20 years, Danny has worked on a variety of complex civil litigation matters for a prominent Kentucky law firm.

To be honest, I did not know Danny before we began talking to prospective candidates, but early on, it was easy to see that he had

the temperament, intellect, and demeanor to make a real difference on the Federal bench. He is going to be a fine judge and I strongly recommend him to the Committee.

Madam Chairman, this hearing today is especially important to us in Kentucky. The Chief of the Eastern District, Judge Forrester, has written to Senator McConnell and myself, as well as this Committee, about judicial emergencies facing the Eastern District of Kentucky right now. There have been a number of vacancies on the bench there and the backlog has become critical. By quickly confirming Danny Reeves, the Committee can help make sure that justice is handed down more swiftly and evenly for the people of Kentucky.

Thank you, and I urge the Committee to move the nomination as quickly as possible.

Senator FEINSTEIN. Thanks very much, Senator Bunning. I appreciate it.

Senator KYL, we will now go to you on Frederick Martone.

Senator KYL. Madam Chairman, could I defer to my colleagues who are at the dias, since they may need to go and I can stay for a little while.

Senator FEINSTEIN. You certainly can. That is very helpful. Senator Brownback, you are next on the list.

Senator BROWNBACK. I will defer to my colleagues. I will let my colleagues go forward, because I will be here.

Senator FEINSTEIN. All right. Senator Roberts, would you proceed, please.

**PRESENTATION OF JULIA A. ROBINSON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS BY HON. PAT ROBERTS, A U.S. SENATOR FROM THE STATE OF KANSAS**

Senator ROBERTS. First, Madam Chairman, I want to thank Senator Kyl and my senior Senator for yielding. I might add that Senator Brownback is, indeed, the senior Senator from Kansas, but he refers to me as the dean of the delegation.

[Laughter.]

Senator BROWNBACK. That is how we parsed it.

Senator ROBERTS. I am more than happy to join—

Senator BROWNBACK. It is age before beauty.

[Laughter.]

Senator ROBERTS. I am more than happy to join my senior Senator as dean and say with a great honor that I introduce and support the President's nomination of Julie A. Robinson as our Federal District Judge for the State of Kansas.

Madam Chairman, one only has to glance very briefly at her extensive record, spanning over two decades, to know she is highly qualified for this important responsibility. She is a skilled litigator, fully schooled in both criminal and civil areas of the law. Judge Robinson served with distinction as an Assistant U.S. Attorney for 11 years, ultimately attaining the position of the Senior Litigation Counsel.

Then in 1994, she ascended to the bench as our United States Bankruptcy Court Judge, and shortly thereafter, she sat on the United States Bankruptcy Appellate Panel of the Tenth Circuit. Her transition from being an advocate of the law to the interpreter

of the law certainly came naturally, with very thoughtful opinions and judicious applications and unquestioned professionalism. She gained deep respect that she has now within the entire Kansas legal community.

Judge Robinson does command respect from all who have been with her in the courtroom and in her courtroom, both losers and winners. Just as important, she commands respect, admiration, and affection from all who know her, both personally and professionally.

An observation, Madam Chairman. Our task of confirming judges, in my opinion, is vitally important. Everybody on this Committee knows that. More so than ever in recent history, the landscape of our law is changing rapidly and is taking us further and further into new, uncharted territory. So our judicial vacancies must be filled by individuals that really possess more than just highly developed legal minds.

Our nation's system faces serious challenges. On the one hand, we demand the toughest of legal actions against those who attack our country. On the other, we look to our courtrooms and our judges to protect our basic individual liberties and our freedoms. This is a very difficult balancing act, but I am very confident that Judge Robinson is the right nomination at the right time.

Now, more than ever, we need judges who understand the human element within the law. A judge's ruling not only affects the primary participants in a case but the future, as well. Unforeseen lives can be changed drastically by a single opinion.

With so many changes occurring in the law, we need judges such as Julie Robinson who grasp this concept. It is this foresight that is needed now more than ever in these volatile times.

Above all, it seems to me that this position requires a steward of the law with an impenetrable character. I assure my colleagues you will find no dissent with—

Chairman LEAHY. If the Senator could withhold just for a moment, we have a medical problem, and if you could withhold just for a moment.

[Pause.]

[Recess.]

Senator FEINSTEIN. Thank you very much for your patience. We will resume the hearing.

I would like to quickly just state how we will proceed. I would like to introduce for the record the statements of Senator Cleland, the finishing statement of Senator Roberts, the statement of Senator Miller, and also a letter that Senator Leahy is submitting on behalf of Mr. Rogan. That will be the order.

[The prepared statement of Senator Roberts follows:]

STATEMENT OF HON. PAT ROBERTS, A U.S. SENATOR FROM THE STATE OF KANSAS

Mr. Chairman, it is with great honor that I introduce and support President Bush's nomination of Julie A. Robinson as Federal District Judge for the state of Kansas.

One only has to glance briefly at her extensive record spanning over two decades to know she is highly qualified for this important responsibility. A skilled litigator fully schooled in both criminal and civil areas of the law, Judge Robinson served with distinction as Assistant U.S. Attorney for 11 years, ultimately attaining the position of Senior Litigation Counsel.

In 1994, she ascended to the bench as United States Bankruptcy Appellate Panel of the Tenth Circuit. Her transition from advocate of the law to interpreter of the law came naturally. With thoughtful opinion, judicious applications, and unquestioned professionalism she gained deep respect within the Kansas legal community. Judge Robinson commands respect from all who have been in her courtroom—both losers and winners. Just as important, she commands respect, admiration and affection from all who know her, both personally and professionally.

Our task of confirming Judges is vitally important—more so than ever in recent history. The landscape of the law is changing rapidly, taking us further and further into new, uncharted territory. Judicial vacancies must be filled by individuals possessing more than just highly developed legal minds.

Our nation's judicial system faces serious challenges. On the one hand, we demand the toughest of legal actions against those who attack our country. On the other, we look to our courtrooms and our judges to protect our basic individual liberties and freedoms.

We know this is a difficult balancing act. However, I am confident that Judge Robinson is the right nomination at the right time.

Now, more than ever, we need judges who understand the human element within the law. A judge's ruling affects not only the primary participants in a case, but future litigants. Unforeseen lives can be changed drastically by a single opinion. With so many changes occurring in the law, we need judges such as Julie Robinson who grasp this concept. It is this foresight that is needed now more than ever in these volatile times.

Above all, this position requires a steward of the law with an impenetrable character. I assure my colleagues you will find no dissent within the state of Kansas as to her moral fitness or professionalism. Character envelopes the core of her keen intellect—not to mention her down-to-earth good natured common sense.

The Senate has both the duty and privilege to confirm Judge Robinson. Her abilities will benefit not only the state of Kansas, but the entire country. It is with great pride that I can come before you today in support of this remarkable woman. With so much cynicism directed towards the legal community today, Julie Robinson elevates this position to new levels. Supported by the entire Kansas Congressional delegation and the state of Kansas, she is ready for this challenge. Examine her record, consult her colleagues, but more importantly look closely at her character. You will be more than satisfied.

Again, I urge her confirmation at the committee's earliest convenience. An emergency exists within the Kansas district caused by a vacancy in Topeka. We need Judge Robinson and board as soon as possible to erase what is becoming a serious backlog of cases.

Senator FEINSTEIN. Directly following the statements made by Senators Kyl and Brownback, we will begin the hearings and all the judge candidates will come forward. You will be sworn in en banc. We will take Judge Robinson first, and then go down the line of other judges. Mr. Rogan will then follow.

This room apparently is wanted at 12:30 for another Judiciary Committee meeting, so we are going to try to move as rapidly as we can and hopefully truncate our statements and our questions.

Let me proceed, then. I would also like to incorporate in the record all opening statements of those who wish.

Senator Roberts has left, so if we can proceed now with the Senator from Arizona, Senator Kyl.

Senator KYL. Since the candidate from Kansas was being discussed, would Senator Brownback like to go ahead and finish that, and then I will make my statement.

Senator FEINSTEIN. Senator Brownback, please, go ahead.

**PRESENTATION OF JULIA A. ROBINSON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS BY HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS**

Senator BROWNBACK. Thank you very much for yielding. I appreciate that from the Senator from Arizona. Thank you very much,

Madam Chairman, for helping out in the difficult circumstance. I am happy to tell everybody it appears as if she will be fine. She is headed to the hospital for some routine tests, but thank you for your quick response to her.

Senator FEINSTEIN. You are welcome.

Senator BROWNBAC. That was Judge Robinson's aunt, who lives back here in the Baltimore area, whose son is a cardiologist, so will be in good hands here in a short period of time.

Senator Roberts had already mentioned about Julie Robinson's background, which I am delighted to support for this judicial nomination position. If I could, I want to put my entire statement in the record and I just want to add a few bits of personal information.

Judge Robinson and I were in law school together at the University of Kansas, the always fighting, every night Jayhawks, particularly in basketball, better there than in football, but she was an outstanding student at the University of Kansas. She clerked for a District judge in Kansas. She then went to the U.S. Attorney's Office and was a lead litigator there and was appointed by President Clinton to the Bankruptcy Court and has served as a bankruptcy judge. So her legal pedigree is outstanding.

Her blood line is incredible. She is a fourth generation Kansas from the Exoduster tradition, and for those people who do not know what an Exoduster is, it was a group of freed slaves that had moved out of the deep South after the Civil War. So in the 1860s, her family lineage came to Kansas and settled there and have been in Kansas ever since, fourth generation. They have shown themselves outstanding. Her father was a veteran of both the Korean and Vietnam conflict, was an intelligence warrant officer in the Army. He has since deceased, but I am certain that he is looking down from heaven today and quite pleased with his daughter, Julie Robinson.

She is married. They have two children. They live in Kansas. She is very active in her community. She has been a disciple buddy Bible study facilitator. She works on racial reconciliation at her church. The American Bar Association has given her a unanimous "well qualified" recommendation.

Suffice it to say, Madam Chairman, I think what we have here is a candidate that is both qualified with her qualifications in the legal profession and qualified by her heart, by what all she has already done and the pedigree and the legacy that she carries on in an excellent, outstanding family, and I am very pleased to be here to support her candidacy.

Senator FEINSTEIN. Thank you very much, Senator Brownback. [The prepared statement of Senator Brownback follows:]

STATEMENT OF HON. SAM BROWNBAC, A U.S. SENATOR FROM THE STATE OF KANSAS

Madame Chairman, fellow members of the Judiciary Committee, thank you for allowing me to appear before you on this side of the dais to introduce an outstanding nominee for the District Court for the District of Kansas. As the senior Senator from Kansas, I take great pride in her nomination, and I am thrilled to be here today to introduce Judge Julie Robinson and her Beautiful family to you.

As a new member of the Judiciary Committee in this Congress, I took very seriously the job of finding a the best candidate to suggest to the President to fill the seat vacated by Judge Van Bebber for the District Court in Kansas. I undertook a lengthy process to interview candidates for this position, enlisting the assistance and input of excellent advisors in Kansas from both the private sector and aca-

demia. I pleased to state before this Committee, that Judge Robinson stood head and shoulders above all the other candidates I considered for the position of District Judge for the District of Kansas.

Julie Robinson is a fourth-generation Kansan, whose roots in Kansas go back to the 1860s, when her father's mother's family, the Bakers, moved west as part of a movement known as the Exodusters, and settled in Hiawatha, Kansas, where they reside to this day. Julie Robinson is the great-granddaughter of those pioneers. Many of my colleagues from the East may not have heard of the Exodusters. Between the mid- 1860s and the 1880s, thousands of African-Americans settled in Kansas Oklahoma, and other part of the American West. Nicodemus, Boley, and other black towns where the product of long-distance migration of blacks from the Deep South. These were newly-freed slaves drawn to the American West to create new communities for people desperately seeking opportunity. In fact, the oldest and only remaining black settled town in the West is Nicodemus, Kansas, now a national historical site.

Judge Robinson's parents served their country with distinction, a tradition which she has already followed in her current position, and a tradition which I am sure she will continue as a federal district judge for Kansas. Judge Robinson's late father was a veteran of Korea and Vietnam, and served for many years overseas as a Intelligence warrant officer in the Army. I am sure he is very product of his daughter today. Judge Robinson's mother, Charlene Robinson, who is here with her daughter today, served many years overseas as a nurse-practitioner with the Department of Defense, and also with the Veterans Administration here in the States. Due to her family's service to their country, Judge Robinson grew up in places as diverse as Germany and the Panama Canal Zone.

Judge Robinson's family finally settled back in Kansas, where she had the opportunity to earn both an undergraduate degree in journalism and a law degree from the University of Kansas. I must not here that Julie's brother Thomas Robinson, who is also here today, is also a graduate of the University of Kansas Law School. After graduating from law school in 1981, Judge Robinson clerked for the Honorable Benjamin E. Franklin, then the Chief Bankruptcy Judge for the District of Kansas. From 1983 to 1994, Judge Robinson was an Assistant U.S. Attorney in the District of Kansas, litigating both civil and criminal cases. From 1992 to 1994, Judge Robinson was designated Senior Litigation Counsel for the U.S. Attorney's Office. Judge Robinson also taught trial practice at the University of Kansas law School from 1989 to 1990. In February, 1994, President Clinton appointed Julie Robinson to her current position as a United States Bankruptcy Judge for the District of Kansas. She also currently serves as a Judge on the Tenth Circuit Bankruptcy Appellate Panel.

Finally, Judge Robinson is active in her church as a leader of Disciple Bible Study, a facilitator on racial reconciliation, and she serves as a member of the South Africa mission team as well as several other ministries.

Madame Chairman, fellow members of the Committee, it is my distinct honor and great pleasure to know Judge Julie Robinson, and to give here my highest recommendation to the Committee for the position of District Judge for the District of Kansas. Kansas is indeed blessed to have such a wonderful human and outstanding attorney willing to serve in the Third Branch of our nation's federal government. I strongly urge the Chair and my colleagues on the Judiciary Committee to act swiftly to approve the nomination of Judge Julie Robinson, and to quickly confirm here as the newest District Judge for the District of Kansas before the 107<sup>th</sup> Congress adjourns.

Thank you Madame Chairman.

Senator FEINSTEIN. Senator Kyl?

**PRESENTATION OF FREDERICK J. MARTONE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA BY HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA**

Senator KYL. Thank you, Madam Chairman. I am a little bit biased because I have known Justice Frederick Martone now for almost 30 years and know his family. His son is an avid hiker of the same mountain that I hike when I can, and he can go up and down about four times for every one time I can.

But Frederick Martone is known as one of the brightest legal minds in the State of Arizona, and he came to Arizona after grow-

ing up in the East. He was an officer of the United States Air Force. He clerked for a judge on the Supreme Court of Massachusetts after his school, which began with a bachelor's degree from Holy Cross University, his law degree from Notre Dame Law School, and then a Harvard Law School L.L.M. I will not get into all of the awards and the achievements in school, but would note that he was an editor of the Notre Dame Law Review.

But he came to Phoenix, because that is where his wife's family was from, in 1973 and joined one of the most prestigious and largest law firms in the State of Arizona, where he practiced for 12 years. He had an extensive practice in Federal court. I am very familiar with that practice. That is, I think, where he acquired, as I said, a very strong reputation for keen legal mind and also, I would say, for being a superb writer.

He was appointed to the Superior Court in Arizona, which is the trial court for the State, where he served for seven years, and then was appointed by the Governor of the State of Arizona to the Supreme Court of the State of Arizona, and he has served on the Arizona State Supreme Court now for nine years. He naturally has chaired many judicial type positions and is a leading member of the bar in the State of Arizona.

In view of the circumstances, I will not further describe his qualifications except to say that, as I said, I have known Justice Martone now for almost 30 years, all of that time as a lawyer or judge, and I can truthfully say that there is nobody in the State of Arizona that I can think of that would come to the Federal District Court with higher qualifications, better experience than Justice Fred Martone.

Therefore, I am very pleased to be able to introduce him here today and to say that my colleague, John McCain, who could not be here this morning, also strongly endorses Justice Martone for this position, and I am just delighted that the President has nominated him for the Federal District Court in Arizona.

Senator FEINSTEIN. Thank you very much, Senator Kyl.

I believe this completes the statements of the Senators on behalf of the nominees, and now if the nominees would please come forward and take their places at the table. The clerk will put out a little identity sign. Judge Robinson, you are over on the far left. Mr. Heaton is next, Mr. Land, Justice Martone, Mr. Reeves, and Mr. Rogan on the far right, you will be happy to know.

[Laughter.]

Senator FEINSTEIN. Since you are here we will talk with you as soon as we finish with the judges, if that is agreeable. If the judicial candidates could come forward, please. If you will remain standing and raise your right hand and simply affirm the oath after I complete its reading by saying either, "I do" or "I will."

Do you swear that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth?

Judge ROBINSON. I do.

Mr. HEATON. I do.

Mr. LAND. I do.

Judge MARTONE. I do.

Mr. REEVES. I do.



Mr. ROGAN. I do.

Senator FEINSTEIN. Thank you very much. Please be seated.

Now, I will ask each of the nominees if they have a brief statement. We would appreciate your brevity, but by all means, we would love to have you introduce your family or friends who are here. Judge Robinson, if you would go first, please, and then we will go right down the panel.

**STATEMENT OF JULIE A. ROBINSON, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF KANSAS**

Judge ROBINSON. Thank you, Madam Chairman. I would like to introduce my family members that are here, my husband, William Thurman, my children, Jordan and Brooke Thurman, my mother, Charlene Robinson, my brother, Tom Robinson. My aunt and uncle have previously left, Uncle Lawrence and Aunt Ruth, and I have some bankruptcy judge colleagues who are also here, Tom Cornish, Marcia Krieger, and Dana Rasher.

Senator FEINSTEIN. Terrific. I think we should give you all a big round of applause. Thank you very much.

[Applause.]

[The biographical information of Judge Robinson follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Julie Ann Robinson  
Julie Robinson Trice (name used 1982-1987)
2. Address: List current place of residence and office address(es).  
  
Residence:  
Leawood, Kansas 66224  
  
Office:  
(Headquarters)  
225 U.S. Courthouse  
444 S.E. Quincy  
Topeka, Kansas 66683  
  
140 U.S. Courthouse  
500 State Avenue  
Kansas City, Kansas 66101
3. Date and place of birth.  
  
January 14, 1957 in Omaha, Nebraska
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married to William K. Thurman  
Lucent Technologies Quality consultant  
800 North Point Parkway  
Alpharetta, Georgia 30005
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
College:  
  
University of Kansas August 1974- May 1978  
B.S. Journalism: Newspaper/Editorial conferred May 1978  
  
Law School:  
University of Kansas May 1978-December 1980.  
J.D. conferred January 9, 1981.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

April 1979 - August 1979  
Council on Legal Educational Opportunity  
University of Kansas, Lawrence, Kansas  
Assistant Director

May 1980 - August 1980  
Federal Trade Commission  
Washington, DC  
Legal Intern

March 1981- May 1981:  
Schneider, Shamberg & May, P.C.  
Merriam, Kansas  
Law clerk

June 1981- November 1983:  
United States Bankruptcy Court  
Kansas City, Kansas  
Law clerk to the Honorable Benjamin E. Franklin,  
United States Bankruptcy Judge (now deceased)

November 1983- February 1994:  
United States Attorney's Office,  
Kansas City, Kansas  
Assistant United States Attorney 1983-1992.  
Senior Litigation Counsel 1992-February 1994.

January 1989- May 1990:  
University of Kansas School of Law,  
Lawrence, Kansas  
Adjunct Faculty, Trial Practice Clinic.

Feb. 1994- Present:  
United States Bankruptcy Judge  
United States Bankruptcy Court  
Topeka, Kansas

July 1996- Present:  
U.S. Bankruptcy Appellate Panel of Tenth Circuit  
Denver, Colorado  
One of 9 bankruptcy judges serving on the panel

Other Activities:  
October 1999 - June 2001  
United Methodist Youthville  
Board of Trustees

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Kansas Fellow, American Bar Foundation 1995-Present

National Achievement Scholar Finalist 1974

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Earl E. O'Connor Inn of Court  
Program Chair 1992-1994

American Bar Association

National Bar Association, Judicial Council 1996- 1997

National Conference of Bankruptcy Judges  
Finance Committee 1995-1998  
NBA Liaison Committee Chair 1996-2000

Topeka Bar Association

Kansas Bar Association

Minority Representation Committee, 1986  
State and Local Bar Committee, 1987-88  
Task Force on Minorities, 1990, 1992  
Committee On Professionalism, Equality and Quality, 1993. In 2000-2001, I was interviewed, along with several other lawyers and judges about the practice of law and preparing for the practice of law. A video is being produced, which will be disseminated to college

and high school students interested in the legal profession.

American Bankruptcy Institute

Bankruptcy Judges Advisory Group to  
Administrative Office of United States Courts -  
proposed language for revisions to the regulations  
concerning reappointment of bankruptcy judges; gave  
advice on a variety of issues including privacy and  
public access to bankruptcy court case files, venue in  
bankruptcy cases of corporations, contempt powers of  
bankruptcy judges, and work measurement formulas for  
staffing of clerks offices.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Supreme Court of Kansas	May 15, 1981
United States District Court for the District of Kansas	May 15, 1981
Supreme Court of Missouri	September 17, 1983
United States District Court for the Western District of Missouri	September 24, 1983
United States Tenth Circuit Court of Appeals	November 21, 1984

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Articles: (attached)

*Annual Survey of Law, Chapter 3: Bankruptcy*, Kansas Bar Association, 1999.

*Annual Survey of Law, Chapter 3: Bankruptcy*, Kansas Bar Association, 2000.

Seminar Materials (attached):

"*Bankruptcy Crimes*," Bankruptcy Mania I, Wichita Bar Association and Continuing Legal Education, March 11, 1994.

*Recent Developments in Bankruptcy*, National Bar Association, August 1996.

"*Processing an Appeal to the Bankruptcy Appellate Panel*," Topeka Area Bankruptcy Council, September 1996.

*When the Family Breaks Up: Are Bankruptcy Judges Becoming Domestic Relations Judges?* Farm, Ranch & Agribusiness Institute, October 1997.

*Developing a Practice in Debtor Representation*, National Bar Association, July 1998.

*Standards of Conduct and Discipline of Judges*, Earl E. O'Connor Inn of Court, January 1999.

*View from the Bench: When Torts and Bankruptcy Intersect*, Kansas Trial Lawyers Association, April 2001.

Speeches (attached):

*Congressional Control of Federal Jurisdiction of Bankruptcy Cases*, Washburn Law School, October 1996.

*Eleventh Amendment Immunity*, Kansas Bar Association, Bankruptcy Seminar, March 2000.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical examination was on July 5, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

2/15/94 to Present -U.S. Bankruptcy Judge, Appointed.  
United States Bankruptcy Court for the District of Kansas.

The bankruptcy court is a unit of the district court, which has original and exclusive jurisdiction of all cases under Title 11, United States Code [The Bankruptcy Code] as well as original, but not exclusive jurisdiction of all civil proceedings arising under, arising in or related to cases under Title 11. Almost all such cases are referred by the district court judges to the bankruptcy judges.

7/96 to Present - Judge, U.S. Bankruptcy Appellate Panel of Tenth Circuit, Appointed.

The Bankruptcy Appellate Panel (BAP) hears appeals of bankruptcy court decisions from all districts in the Tenth Circuit except the District of Colorado. The appellant and appellee must consent to disposition by the BAP rather than by the United States District Court. BAP decisions are appealed to the Tenth Circuit Court of Appeals.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Ten Most Significant Opinions

From February 1994 to June 2001, I have issued 276 written opinions, 42 published and 234 unpublished. In addition I have authored 19 opinions of the Bankruptcy Appellate Panel and been a panel judge on 38 opinions. The ten most significant of these are:

In re Valley View Shopping Center, L.P., 260 B.R. 10 (Bankr. D. Kan. 2001).

In re Kansas Personal Communications Servs., Ltd., 252 B.R. 179 (Bankr. D. Kan. 2000), rev'd, 256 B.R. 807 (D. Kan. 2000).

In re Adams, 218 B.R. 597 (Bankr. D. Kan. 1998).

In re Fisher, 194 B.R. 525 (Bankr. D. Kan. 1996), aff'd, 1996 WL 695401 (D. Kan. Nov. 27, 1996). [copy attached]

In re Albrecht, 245 B.R. 666 (10th Cir. BAP 2000), aff'd 233 F.3d 1258 (10th Cir. 2000).

In re Krug, No. 93-41762-12, Adv. No. 94-7006 (Bankr. D. Kan. May 5, 1995) [copy attached].

In re Minkoff, No. 97-22962-11, 1999 WL 1424987 (Bankr. D. Kan. Dec. 6, 1999) [copy attached].

In re Williams, 216 B.R. 447 (Bankr. D. Kan. 1998).

In re Isenbart, 255 B.R. 62 (Bankr. D. Kan. 2000).

In re Moore, 214 B.R. 628 (Bankr. D. Kan. 1997).

## (2) Decisions Reversed or Criticized

In re Brown, No. 92-41284-7C, Adv. No. 93-7047 (Bankr. D. Kan. Jan. 17, 1995) [copy attached]. The Bankruptcy Court denied Debtor's bankruptcy discharge on several grounds: concealment of property by placing it beyond creditor's reach; omissions from bankruptcy schedules; failure to keep records on antique car collection; discrepancies in claimed value of assets. The District Court, 194 B.R. 514 (D. Kan. 1996), affirmed on all grounds except failure to keep records, finding debtor's failure to keep any records was justified because his car collection was a hobby, not a business. The Tenth Circuit reversed on all grounds, ruling that the debtor was entitled to a bankruptcy discharge. In re Brown, 108 F.3d 1290 (10<sup>th</sup> Cir. 1997). The Tenth Circuit found that the granting of a security interest in debtor's only unencumbered asset in order to obtain capital for debtor's businesses did not evidence fraud; nor were differences in the valuation of assets in bankruptcy schedules and financial statements sufficient evidence of fraud; nor was debtor's failure to disclose certain pre-



petition transactions sufficient evidence of fraudulent intent.

In re Harness, No. 94-42048-11 (Bankr. D. Kan. Feb. 28, 1997). [copy attached] Bankruptcy Court denied Trustee's motion to compel the debtors to pay post-confirmation quarterly fees under amended 28 U.S.C. § 1930(a)(6) because the statute as amended fails to provide a means or mechanism to assess or collect the fees without violating key provisions of Chapter 11. District Court reversed in No. 97-4054-RDR (D. Kan. March 24, 1998) [copy attached], finding that the statute could be reasonably construed to discern an inevitable and definable stopping point for the payment of quarterly fees. While acknowledging that requiring a payment of post-confirmation quarterly fees might be considered a violation of the provisions of 11 U.S.C. §§ 1127(b) and 1141, to fulfill the intent of Congress and to harmonize the application of § 1930(a)(6) with these sections of the Code, the court found that the quarterly fees should be considered post-confirmation administrative expenses not specifically addressed in the plan.

In re Adcock, 234 B.R. 815 (Bankr. D. Kan. 1999). The Bankruptcy Court found that K.S.A. 60-2310 provides an exemption for 75% of a debtor's wages. Where there was no issue regarding co-mingling, wages do not lose their exempt status upon being deposited in debtor's bank account. The District Court reversed in No. 99-1233 (D. Kan. Mar. 10, 2000) [copy attached], finding that wages are exempt only before they are paid to the debtor.

In re Kansas Personal Communications Servs., Ltd., 252 B.R. 179 (Bankr. D. Kan. 2000). The Bankruptcy Court held that PCS Licenses issued by the FCC are property of the licensee's bankruptcy estate; and the FCC, by taking a security interest in the Licenses, acknowledged that the debtor had a property interest in the Licenses. The FCC's cancellation of the Licenses is an act to exercise control over property of the estate stayed under §362(a)(3), and is not a regulatory act excepted under §362(b)(4). The provisions of the Federal Communications Act, including the automatic cancellation provision, does not preempt the Bankruptcy Code with respect to debtor-creditor issues in bankruptcy. The District Court reversed in 256 B.R. 807 (D. Kan. 2000). Although the District Court acknowledged the thoughtful and thorough consideration given the matter by the Bankruptcy Court and that reasonable minds could

disagree on the proper resolution of the issues presented, it reversed because it found that automatic cancellation is not an "act" to exercise control over property of the estate, and thus not subject to the automatic stay. The FCC interpretation that licenses automatically cancel without any act by the FCC is not "plainly erroneous or inconsistent with the regulation" but is a reasonable interpretation and must be given "controlling weight." Moreover, the §362(b)(4) regulatory act exception to the automatic stay would be applicable. Automatic cancellation does not relate "primarily to the protection of the government's pecuniary interest" nor is it aimed at "adjudicating private rights."

(3) Significant Opinions on Constitutional Issues

In re American Freight, Inc., 179 B.R. 952 (Bankr. D. Kan. 1995), aff'd, No. 95-4056-RDR (D.Kan. Mar. 29, 1996). [copy attached].

In re Mycro-Tek, No. 93-10302-7, Adv. No. 95-5046 (Bankr. D. Kan. Jan. 9, 1996). [copy attached].

In re Straight, 248 B.R. 403 (10th Cir. BAP 2000), appeal dismissed, No. 00-8042 (10th Cir. filed Nov. 13, 2000). [copy attached].

In re Chandler, 251 B.R. 872 (10th Cir. BAP 2000).

In re Abboud, 237 B.R. 777 (10th Cir. BAP 1999).

In re Chasteen, Case No. 93-11954, Adv. No. 93-5259 (Bankr. D. Kan. Feb. 23, 1995) [copy attached]; aff'd Civil No. 95-1152-PFK (D. Kan. Oct. 25, 1995) [copy attached].

In re Stewart, 215 B.R. 456 (10<sup>th</sup> Cir. BAP 1997), aff'd, 175 F.3d 796 (10<sup>th</sup> Cir. 1999).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
  2. whether you practiced alone, and if so, the addresses and dates;
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

March 1981- May 1981: Schneider, Shamberg & May, 8500 W. 63rd St. Merriam, Kansas. I was a law clerk while waiting for results of bar examination.

June 1981- Nov. 1983: Law Clerk to the Honorable Benjamin E. Franklin, United States Bankruptcy Judge, Kansas City, Kansas.

November 1983- February 1994: United States Attorney's Office, 812 N. 7th Street, Kansas City, Kansas. I was an Assistant United States Attorney from 1983 to 1992; and from 1992 to February 1994, I was designated Senior Litigation Counsel.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

November 1983 - December 1986: I represented the United States in civil and bankruptcy cases, including actions seeking judgment on government loans, as well as defending the government in Title 7 litigation, denial

of social security benefits, and in medical malpractice, wrongful death and personal injury actions brought under the Federal Tort Claims Act. I also prosecuted criminal cases, including drug, treasury, immigration, tax, bank robbery and white collar crimes.

January 1987-December 1989: I continued to handle civil and criminal cases. In addition to the types of cases mentioned above, I prosecuted tax fraud and public corruption.

January 1990- February 1994: I handled criminal prosecutions exclusively. In addition to the types of cases previously mentioned, I prosecuted criminal forfeiture, money laundering and health care fraud cases.

February 1994- Present: United States Bankruptcy Judge. From July 1996 to date, I have also served as a Judge on the United States Bankruptcy Appellate Panel for the Tenth Circuit Court of Appeals.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

While an Assistant United States Attorney, in civil and bankruptcy matters I represented a number of agencies, including: IRS, SBA, Farmers Home Administration, HUD, HHS, Department of Army, Veterans Administration, Postal Service, Department of Interior. I handled all types of civil cases, without specializing. I prosecuted criminal cases for a number of agencies, including: FBI, IRS, Secret Service, ATF, DEA, Postal Service and Immigration & Naturalization Service. I also prosecuted cases investigated by state and local authorities, including police and sheriff's departments and Kansas Highway Patrol. While I handled virtually every type of criminal case, my areas of specialty were public corruption, drug conspiracies, tax fraud and white collar crime.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court

varied, describe each such variance, giving dates.

From 1983 to 1994, I appeared in court frequently, at least once a week. I also tried a number of jury trials, many of which were protracted trials.

2. What percentage of these appearances was in:
  - (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.

During the years that I handled civil and criminal cases, I spent about ten percent of my time in state court and ninety percent in federal court. Later, when I handled criminal cases exclusively, all of my time was spent in federal court.

3. What percentage of your litigation was:
  - (a) civil;
  - (b) criminal.

November 1983- December 1986: 75% civil and bankruptcy; 25% criminal. January, 1987-December 1988: 50% civil and bankruptcy; 50% criminal. January 1989- December 1989: 25% civil; 75% criminal. 1990- February 1994: 100% criminal. February 1994- Present: 100% bankruptcy- sitting as U.S. Bankruptcy Judge.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I was sole counsel on eight civil trials. In addition, I tried two bankruptcy cases to judgment; one as sole counsel and one as chief counsel.

I tried 28 criminal trials. I was sole counsel on 25; chief Counsel on two; associate counsel on one.

5. What percentage of these trials was:
  - (a) jury;
  - (b) non-jury.

Of these trials, 93% were to a jury, 7% were to the court.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) United States v. Alex Yung, et al., 37 F.3d 1564 (10<sup>th</sup> Cir. 1994).

This case was tried in the United States District Court for the District of Kansas before Judge John Lungstrum. The trial commenced March 3, 1992 and ended April 8, 1992. I was chief counsel for the United States (Internal Revenue Service), having managed the investigation of this case since its inception in December 1988. Associate counsel was Christopher Cardani, at that time a trial attorney with the Department of Justice. He is now an Assistant United States Attorney in Eugene, Oregon.

There were 10 defendants. One was severed and his trial lasted from January 13, 1993 to January 26, 1993.

The 10 opposing counsel were:

R. Bruce Kips  
6333 Long St., Suite 200  
Shawnee, Kansas 66216-2544  
(913) 962-9800

J. Charles Droege  
10990 Quivira Rd., Suite 280  
Overland Park, Kansas 66210-1281  
(913) 451-5689

Thomas L. Boeding  
(now Wyandotte County District Court Judge,)  
Correctional & Court Services Bldg.  
812 North 7th Street  
Kansas City, Kansas 66101  
(913) 573-4104

Larry C. Pace  
Suite 300, 818 Grand Blvd.  
Kansas City, Missouri 64106-1910  
(816) 471-8282

David J. Phillips  
Assistant Federal Public Defender  
500 State Avenue, Suite 201  
Kansas City, Kansas 66101  
(913) 551-6712

Alfred J. Kolom  
9018 W. 121<sup>st</sup> Terr.  
Overland Park, Kansas 66213  
(913) 791-9123

Robert W. Manske  
301 N. Chestnut  
Olathe, Kansas 66061  
(913) 782-5212

Robert A. DeCoursey  
753 State Avenue, Ste 102  
Kansas City, Kansas 66101  
(913) 371-6711

J. Steven Schweiker  
7134 W. 80th St., Ste 208  
Overland Park, Kansas 66204  
(913) 383-2500

Charles R. Harvey  
P.O. Box 12581  
Shawnee Mission, Kansas 66282  
(913) 696-1300

All 10 defendants were convicted of conspiring to defraud the United States Internal Revenue Service. Defendant Edward Skinner was acquitted of aiding and abetting the filing of false tax returns.

The defendants were members of the International Business Association (IBA), an organization that created phony domestic and foreign trusts and marketed them in 38 states to more than 300 customers. The primary purpose of these trusts was to allow purchasers to conceal income by funneling taxable income into a series of trusts and thereby apparently divesting themselves of the income. The ten defendants included the promoters and most active sales representatives of IBA.

This case was the largest tax case ever prosecuted by the IRS in Kansas and one of the largest tax prosecutions ever undertaken by the Department of Justice. While it was impossible to quantify the tax harm wreaked by IBA, the investigation revealed that millions of dollars of taxable income was funneled through these trusts without payment of tax. It was determined that five of the more than 300 customers laundered more than 15 million dollars in taxable income in just one tax year.

(2) United States v. Clyde Townsend, Case No. 89-20055-01, USDC, D. Kan..

This case was tried before Judge Dale Saffels in the United States District Court for the District of Kansas. The trial commenced October 30, 1989 and ended November 7, 1989.

Opposing counsel was:  
Thomas L. Boeding  
(now Wyandotte County District Court Judge)  
Correctional & Court Services Bldg.  
812 North 7th Street  
Kansas City, Kansas 66101  
(913) 573-4104

I was co-counsel for the United States (FBI) with:  
Robert S. Streepy  
Assistant United States Attorney  
500 State Avenue, Room 360  
Kansas City, Kansas 66101  
(913) 551-6730.

Mr. Streepy was sole counsel in the first trial of Clyde Townsend, which ended in a hung jury; 1 for conviction, 11 for acquittal.

Clyde Townsend, a Wyandotte County Commissioner, was convicted of extorting a bribe from a contractor who paved city parking lots. This case exposed corruption in the Wyandotte County Commission.



(3) United States v. Brenda Smith, 19 F.3d 485 (10th Cir. 1994); 13 F.3d 1421 (10th Cir. 1994).

I was sole counsel for the United States (Secret Service) in this trial before Judge John Lungstrum in the United States District Court for the District of Kansas. The trial commenced November 3, 1992 and ended December 3, 1992.

Opposing counsel at trial was:

John Lozano  
3001 N. 291 Highway, #10  
Harrisonville, Missouri 64701  
(816) 380-5521

Opposing counsel at sentencing and on appeal was:

James Wyrsch  
1101 Walnut Street  
Suite 1300  
Kansas City, Missouri 64106-2122  
(816) 221-0080

Brenda Smith was the operating manager of Globemaster Travel, a travel agency in Overland Park. She designed and executed an elaborate accounting scheme in which she defrauded 19 foreign and domestic airlines in the approximate amount of \$600,000 in a six-week period. Smith enlisted a dozen people to create phony ticket paperwork and to fly all over the United States cashing in fraudulently created tickets at airline counters, using aliases and phony identification cards. Smith then laundered some of the money.

The airlines had not been victimized by a scheme as complex and elaborate as this one. This was also the first criminal forfeiture trial in the District of Kansas. Smith was convicted of mail fraud, money laundering and criminal forfeiture of \$128,177.

(4) United States v. Carl Marshall, et al. (United States v. Williamson, 53 F.3d 1500 (10th Cir., April 14, 1995)).

This trial commenced on September 8, 1993 and ended on October 4, 1993 in the United States District Court for the District of Kansas before Judge John Lungstrum. I was chief counsel for the United States (FBI and DEA), and had managed the investigation of this case since its inception in 1988.

Opposing counsel were:  
 Carl Cornwell  
 6900 College Blvd., Suite 1020  
 Overland Park, Kansas 66210  
 (913) 451-2611

Wendell Betts  
 (Last known address)  
 525 SW Topeka Blvd.  
 Topeka, Kansas 66603-3175  
 (785) 232-2727

Kimberley Kellogg  
 4860 College Blvd., Suite 219  
 Leawood, Kansas 66210  
 (913) 491-9200

Robert DeCoursey  
 753 State Ave., #102  
 Kansas City, Kansas 66101  
 (913) 371-6711

Michael Harris  
 now Assistant Federal Public Defender  
 500 State Avenue, Suite 201  
 Kansas City, Kansas 66101  
 (913) 551-6712.

Seven individuals were indicted for conspiracy to distribute crack cocaine, and various drug distributions. Five defendants went to trial; four were convicted, and the jury was unable to reach a verdict on the fifth. Among those convicted was Edward Dryden, a Kansas City, Kansas police officer who served as the "watchdog" for the drug organization, warning them of pending investigations and storing the proceeds of their drug sales in his residence. The Marshall organization was considered the largest crack cocaine distributor in Kansas City, Kansas in the late 1980s.

(5) United States v. John Quinn, Jr., Case No. 87-20086-05, USDC, D. Kan.

I was the sole counsel for the United States (FBI) in this case tried before Judge Dale E. Saffels, United States District Court for the District of Kansas. The trial commenced January 4, 1988 and ended January 15, 1988. There were 17 defendants.

Opposing counsel were:

James L. Eisenbrandt  
7500 College Blvd., Suite 1100  
Overland Park, Kansas 66210  
(913) 338-7700

Thomas J. Cox  
1125 Grand Avenue, Suite 1700  
Kansas City, Missouri 64106  
(816) 842-7400

Jeffrey L. Baxter  
(Last known address)  
433 Shawnee Street  
Leavenworth, Kansas 66048  
(913) 682-4255

James Sheeley  
816 N. 9<sup>th</sup> Street  
Kansas City, Kansas 66101-3194  
(913) 621-0277

Marcus B. Potter, Jr.  
1977 North 77<sup>th</sup> Street  
Kansas City, Kansas 66112  
(913) 334-0600

Laurence M. Jarvis  
2100 Silver Court  
Kansas City, Kansas 66106  
(913) 432-0660

Gerald N. Jeserich  
748 Ann Avenue  
Kansas City, Kansas 66101  
(913) 371-1930

Lee M. Nation  
620 Inland Shores Drive  
Flagstaff, Arizona 86004  
(Phone number unknown)

Robert Beaird  
(Now Jackson County Prosecuting Attorney)  
415 East 12<sup>th</sup> Street, 11<sup>th</sup> Floor  
Kansas City, Missouri 64106  
(816) 881-3555

Jerry Rellihan  
7608 Raytown Road  
Raytown, Missouri 64138  
(816) 358-3311

Michael Lerner (now disbarred)  
(last known address)  
8575 W. 110th Street  
Suite 105, Overland Park, Kansas  
(913) 451-5621

Michael J. Peterson  
(Last known address)  
816 N. 9th Street  
P.O. Box 171216  
Kansas City, Kansas 66117-1216  
(913) 342-2444

Michael Mance  
301 N. Chestnut St.  
P.O. Box 322  
Olathe, Kansas 66061-3303  
(913) 764-5872

Edward Gillette  
753 State Avenue, Suite 860  
Kansas City, Kansas 66101  
(913) 371-6565

Ten defendants pleaded guilty to state charges; five pleaded guilty to federal charges. The remaining defendants, John L. Quinn, Jr. and Robert Huckaby went to trial. Huckaby was acquitted; Quinn was convicted of operating an illegal gambling business and obstructing state and local law enforcement authorities.

The FBI raided an illegal gambling business conducted at a large auction hall in Wyandotte County, Kansas. There were more than 200 gamblers and more than two dozen employees. The business was operated by John L. Quinn, Jr. aka Smokey, the son of John L. Quinn, Sr., then the sheriff of Wyandotte County. Two of the defendants, Robert Huckaby and Terrell Clark were Wyandotte County deputy sheriffs. Huckaby and Clark were stationed at the door, acting as lookouts, bodyguards and protectors.

This case exposed corruption in the Wyandotte County Sheriff's Office. Sheriff Quinn was later convicted, in an unrelated case, of violating a prisoner's civil rights.

(6) United States v. Jesse Wallace, No. 88-2699 (10th Cir. op. unpublished).

This trial commenced July 18, 1988 and ended August 2, 1988 in the United States District Court for the District of Kansas before Judge Dale Saffels. I was sole counsel for the United States (IRS).

Opposing counsel was:  
James Wyrsh  
1101 Walnut Street, Suite 1300  
Kansas City, Missouri 64106  
(816) 221-0080

Wallace was convicted of 13 counts of filing false tax returns. Wallace owned a computerized tax return preparation service. He had expanded to three offices and sought investor money in order to franchise his computer operation. To that end, he created limited partnerships, attracting investors who were more interested in tax deductions than profits. Wallace assured investors that they would quickly recoup their initial investment by writing off anticipated losses. He further assured them that they would never have to pay the full amount of their partnership investment, that their promissory notes would be forgiven, and that they would ultimately be able to write off more than they invested.

(7) United States v. Isaura Rocha, 986 F.2d 1431 (10th Cir. 1992).

I was sole counsel for the United States (INS) in this trial before Judge G. Thomas Van Bebber in the United States District Court for the District of Kansas. The trial commenced on October 7, 1991 and ended with a guilty verdict on October 11, 1991.

Opposing trial counsel was:  
Henri Watson  
2500 Holmes  
Kansas City, Missouri 64108  
(816) 474-3350

Opposing counsel on appeal was:  
William E. Metcalf  
Metcalf & Justus  
3601 S.W. 29th, Suite 207  
Topeka, Kansas 66601  
(913) 273-9904

Five defendants were indicted, four pleaded guilty and Isaura Rocha was convicted by a jury.

I received commendations from the Attorney General as well as the Immigration and Naturalization Service based on the significance of this case. The defendants were part of an organization that created and marketed fraudulent documents by which illegal aliens could obtain legal status under the seasonal agricultural worker amnesty program. The subject illegal aliens did not qualify for amnesty status as they did not meet the requisites for agricultural employments. The defendants assisted the aliens by providing them with documents, as well as coaching them through hearings conducted by the INS to ascertain the validity of the applications. Through this investigation and prosecution, the organization was disbanded and a number of illegal aliens were identified for deportation proceedings.

(8) United States v. Bernard Smith, Case No. 89-20054-01, USDC, D. Kan.

This case was tried before Judge Dale E. Saffels in the United States District Court for the District of Kansas from September 18, 1989 - September 22, 1989. The case ended in an acquittal. I was sole counsel for the United States (FBI).

Opposing trial counsel was:  
 Carl Cornwell  
 Cornwell & Edmonds  
 6900 College Blvd., Suite 1020  
 Overland Park, Kansas 66210  
 (913) 451-2611

Smith was a police officer for Kansas City, Kansas and was indicted for extorting money from a drug dealer. He was acquitted. This case launched an expansive and long-term investigation of several dozen police officers and deputy sheriffs in Wyandotte County, Kansas.

(9) United States v. Patrick Washington, 11 F.3d 1510 (10th Cir. 1993).

This case was tried before Judge G. Thomas Van Bebber in the United States District Court for the District of Kansas from May 20, 1991 - May 24, 1991. Washington was convicted of conspiracy to distribute crack cocaine, distribution and using a firearm in connection with the offense. I was sole counsel for the United States (FBI).

Opposing counsel was:  
 Gary Long (now disbarred)  
 (Last known address)  
 400 North 6th St.  
 P.O. Box 171032  
 Kansas City, Kansas 66117  
 (913) 371-1945

Patrick Washington was allegedly the largest supplier of crack cocaine in Kansas City, Kansas in 1991. He was supplied directly by a group of Columbians. He was also engaged in money laundering and during the course of the trial, allegedly attempted to hire a hit man to kill the prosecutor, informant and case agent. He was sentenced to 120 years without parole.

(10) United States v. Ed Watson, 992 F.2d 1223 (10th Cir. 1993).

This case was tried before Judge Earl E. O'Connor in the United States District Court for the District of Kansas on November 13, 1989. After several hours of testimony, Watson pleaded guilty during the trial. I was sole counsel for the United States (ATF).

Opposing counsel was:  
 Carl Cornwell  
 Cornwell & Edmonds  
 6900 College Blvd., Suite 1020  
 Overland Park, Kansas 66210  
 (913) 451-2611

Watson was convicted of possession of crack cocaine and using a firearm in the commission of the offense.

Watson was convicted of possessing a relatively small amount of crack cocaine. The significance of this prosecution lies in the history of Watson. For years, a number of local and federal law enforcement agencies had pursued investigations of Watson without success. He was reportedly a significant dealer of crack and powder cocaine, and utilized his grocery store, among other locations, to distribute the drugs. He allegedly was receiving police protection of his activities. This successful prosecution dismantled his organization. He received a 10-year sentence, effectively a life sentence given his advanced age.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I conducted a five year investigation by the United States Attorney's Office and the Federal Bureau of Investigation, of corruption in a local police department. Police officers were implicated in drug dealing, civil rights violations and extortion of bribes from drug dealers. The investigation was ongoing when I left the United States Attorney's Office in 1994. During my tenure, two police officers were indicted; one was acquitted of extortion; one was convicted of conspiracy to distribute cocaine. In addition, several officers were terminated from their employment on the police force.

I was sole counsel, in a medical malpractice case against the United States (Department of Army), brought by a patient who contracted hepatitis from a blood transfusion. This case was initiated about the time that medical practitioners first determined that there was also a risk of contracting AIDS from donated blood.



II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

This district uses software that identifies conflicts based on judges' financial disclosure statements and other statements of financial interest. In addition to relying on the periodic checks performed with this software, I will keep my chambers staff informed of my financial interests, and will supplement their efforts with my own monitoring, as new cases are assigned to me. I have and will continue to comply with the statutory financial disclosure and reporting requirements.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See financial disclosure report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Robinson, Julie A.	2. Court or Organization U.S. District Court, Kansas	3. Date of Report 09/11/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Nominee	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 09/10/2001 Initial _____ Annual _____ Final _____	6. Reporting Period 01/01/2000 to 08/31/2001
7. Chambers or Office Address 225 U.S. Courthouse 444 S.E. Quincy Topeka, Kansas 66683	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1. Member of Board of Trustees	United Methodist Youthville
2.	
3.	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1.	
2.	
3.	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input checked="" type="checkbox"/> NONE (No reportable non-investment income.)		
1.		
2.		
3.		
4.		

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Robinson, Julie A.	09/11/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	National Bar Association	Aug. 1, 2001- Dallas, Texas, Bankruptcy CLE Seminar (food and ground transportation)
2	National Conference of Bankruptcy Judges	Aug. 1, 2001 - Dallas, Texas, Bankruptcy CLE Seminar (airline transportation)
3	Kansas Bar Association	Mar. 2, 2001 - Wichita, Kansas, Kansas Bankruptcy Law Seminar (Hotel)
4		
5		
6		
7		

**V. GIFTS**

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

**VI. LIABILITIES**

(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	AT&T Universal	credit card	J
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Robinson, Julie A.		Date of Report 09/11/2001	
<b>VII. Page 1 INVESTMENTS AND TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value/Gain (4) Code (5) Identity of Month: Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
1 Lucent ESOP (breakdown as below, #s 11-19, 23, 24)	** A	Dividend	K	T	EXEMPT
2 Privileged Assets - Amex		None	J	T	"
3 Twentieth Century Select Fund		None	J	T	"
4 Benham Cash Reserve Fund		None	J	T	"
5 American Century Select Fund		None	J	T	"
6 Lucent 401(K)		None	M	T	"
7 US savings bonds		None	J	T	"
8 US savings bond		None	J	T	"
9 Firststar (formerly Mercantile Bank)	A	Interest	J	T	"
10 Bank of America	A	Interest	J	T	"
11 ** SBC Communication, Inc.	A	Dividend	J	T	"
12 ** AT&T Corporation	A	Interest	J	T	"
13 ** Bell Atlantic Corporation		None	J	T	"
14 ** Bell Atlantic Corporation		None	J	T	"
15 ** US West, Inc.		None	J	T	"
16 ** BellSouth Corporation		None	J	T	"
17 ** Pacific Telesis		None	J	T	"
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Robinson, Julie A.	Date of Report 09/11/2001
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 ** Hynex	None		J	T	"				
19 **vodafone Airtouch Ltd.	A	Cash			"				
20 **AT&T	A	Cash	J	T	"				
21 Bank of America Stock	A	Dividend	J	T	"				
22 New Century Credit Union		None	J	T	"				
23 State Farm Life Insurance Co.	A	Interest	J	T	"				
24 Verizon, Inc.		None	J	T	"				
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									

1 net/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 O=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Robinson, Julie A.	09/11/2001

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.***(Indicate part of report.)***VII. INVESTMENTS and TRUSTS**

1,11-20. Lucent ESOP is aggregately comprised of several corporations, including the ten (as broken down in numbers 11-20 on this report).

3,4,5. Twentieth Century, Benham, and American Century related mutual funds.

12. AT&T/Media One merger.

19. Vodafone- Merger- Received cash in lieu of fractional shares.

20. AT&T/Media One merger. Cash in lieu of fractional shares.

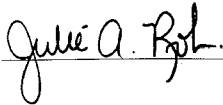
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Robinson, Julie A.	Date of Report 09/11/2001
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## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

9/11/01

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	9	350	Notes payable to banks-secured		0
U.S. Government securities-add schedule	13	500	Notes payable to banks-unsecured		2,500
Listed securities-add schedule	9	940	Notes payable to relatives		0
Unlisted securities--add schedule			Notes payable to others		0
Accounts and notes receivable:			Accounts and bills due		35,000
Due from relatives and friends			Unpaid income tax		0
Due from others			Other unpaid income and interest		0
Doubtful			Real estate mortgages payable-add schedule		280,000
Real estate owned-add schedule	425	000	Chattel mortgages and other liens payable		0
Real estate mortgages receivable			Other debts-itemize:		0
Autos and other personal property	65	000			
Cash value-life insurance	6	300			
Other assets itemize:					
American Century mutual fund		2,000			
Twentieth Century Mutual Fund		1,000			
TSP	245	000	Total liabilities		317,500
Lucent 401(K)	10	000	Net Worth		474,590
Total Assets	742	090	Total liabilities and net worth	742	090
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor		0	Are any assets pledged? (Add schedule)		NO
On leases or contracts		0	Are you defendant in any suits or legal actions?		NO
Legal Claims		0	Have you ever taken bankruptcy?		NO
Provision for Federal Income Tax		0			
Other special debt		0			

## U.S. Government Securities- Savings Bonds

Payee	Date	Value as of October, 2000
Dependent 1	7/7/86	612.00
	12/22/86	539.60
	9/9/87	528.80
	12/1/87	518.40
	9/1/88	508.20
	12/20/88	493.40
	9/8/89	479.20
	12/12/89	465.20
	9/5/90	903.20
	9/1/91	850.16
	9/21/92	802.40
	9/10/93	707.60
	9/13/94	676.40
	9/15/95	624.00
	9/15/96	594.00
Dependent 2	9/11/91	850.16
	10/14/92	802.40
	9/10/93	707.60
	9/13/94	676.40
	9/15/95	624.00
	9/5/96	594.00
		<hr/> \$13,551.12

## Listed Securities

Company	Shares	Market Price	Value
Bank of America	116	60.14	6976.24
SBC Communications	16	40.00	640
AT&T Corp.	25	20.12	503
Bell Atlantic			50
U.S. West	8	24.90	199.20
Bellsouth Corporation	15	39.40	591
Pacific Telesis			50
Nynex			50
Vodaphone Airtouch	10	22.62	226.20
Verizon	4	52.74	210.96
Lucent	84	5.31	446.04
			<hr/>
			9942.64

## Real Estate Owned

Residence  
Leawood, Kansas

Mortgagee: Harrington Bank F.S.B. - balance due \$280,000 principal

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Most of my service to the disadvantaged has been in a nonlegal capacity. As a government lawyer and now a judge, my ability to represent parties was limited, if not precluded. However, like most judges, I have served the bar through teaching, speaking and writing for the continuing legal education of the bar. In addition, I have served the community in a variety of ways, including serving on the board of directors of United Methodist Youthville, a social service agency providing foster care services, family reintegration and adoption services for a significant number of disadvantaged children and families in Kansas.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not belong, nor have I belonged to any organization that discriminates on the basis of race, sex or religion, either in formal practice or in a de facto manner. In college, I belonged to a sorority and I am now a member of the Girl Scouts of America, both of which are organizations for girls and women. However, neither organization invidiously discriminates on the basis of race, sex or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process,

from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, there was an advisory committee formed by Senator Sam Brownback, whose membership included seven Kansas lawyers and one lay person. I was interviewed by this committee, and was among four names recommended to the Senator. I was also interviewed by Senator Brownback, who chose three finalists. Senators Brownback and Roberts then submitted a joint letter to the White House, recommending these three persons for consideration. The letter did not rank the three finalists. After I was interviewed by Judge Alberto Gonzalez, White House Counsel, I was informed that I had been selected as the nominee. After a background investigation by the FBI and the IRS, and the White House's evaluation of my questionnaire, on September 10, 2001, President George W. Bush nominated me.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No, as a sitting judge, all participants in the interviewing process honored my ethical obligation to not discuss matters or issues pending before me, and acknowledged that a judge must decide issues as they are presented to the judge in the context of an actual case or controversy.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The people created a government of three branches, legislative, executive and judicial. The people retained the power to govern themselves, except for those enumerated and separate powers that they delegated to the three branches. As expressed in the Constitution, the people delegated to the legislative branch, the power to address social problems with broad, prospective remedies, including the imposition of affirmative duties on people and institutions. As further expressed in the Constitution, the people delegated to the executive branch, the power to enforce and administer such relief, in the short term, or in the long term, by continuing administrative oversight.

The people empowered the legislative and executive branches to take action that might potentially be oppressive or unduly intrusive. Yet, this power is tempered. These two branches of government are directly and continually accountable to the will of the people as expressed in the ballot box. This accountability ensures that the legislative and executive branches will in fact effectuate the will of the people. And, their willingness and ability to effectuate the people's will is evaluated in short order, through the electoral process.

The people delegated lesser powers to the judicial branch, precisely because the judiciary lacks electoral accountability. The courts are empowered to resolve actual cases and controversy, brought by affected parties with standing to seek relief. In the exercise of its delegated and separate powers, the judiciary further assures the separation of powers, and protects individual liberty by acting as the bulwark of the Constitution.

In resolving actual cases and controversies, the courts must effectuate the core values of reliability, stability, predictability and fairness, honoring the rule of law and the doctrines of stare decisis and precedent. And, while the judiciary is empowered to fashion relief, the people intended that the relief be constructed and applied as

narrowly as possible. Simply put, citizens who have not submitted to the court's jurisdiction of their particular case or controversy, have not agreed to succumb to remedial duties and rules fashioned by a judge who is insulated from electoral accountability.



Senator FEINSTEIN. Mr. Heaton?

**STATEMENT OF JOE L. HEATON, NOMINEE TO BE DISTRICT  
JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA**

Mr. HEATON. Senator, my wife and sons are not here. They have told me they expect a full report, but they are not with me today.  
[The biographical information of Mr. Heaton follows.]

RESPONSES TO UNITED STATES SENATE  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

JOE L. HEATON

Nominee - U. S. District Judge  
Western District of Oklahoma

August 1, 2001

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Joseph Lynn Heaton

I normally use "Joe Heaton" or "Joe L. Heaton"

2. Address: List current place of residence and office address(es).

Residence: Edmond, Oklahoma

Office: U. S. Attorney's Office  
210 Park Avenue, Suite 400  
Oklahoma City, Oklahoma 73102

3. Date and place of birth.

Born December 12, 1951, Alva, Oklahoma.

4. Marital status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business addresses.

Married to Dee Anne Heaton, formerly Dee Anne Barbour. Homemaker; not employed outside the home.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Northwestern State College (now Northwestern Oklahoma State University)  
Alva, Oklahoma  
Attended from August, 1970, to May, 1973.  
Received Bachelor of Arts degree in May, 1973.

University of Oklahoma College of Law  
 Norman, Oklahoma  
 Attended from August, 1973, to May, 1976  
 Received Juris Doctor degree in May, 1976

**6. Employment record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

1996 to present: First Assistant U. S. Attorney, Western District of Oklahoma, U. S. Department of Justice.

1993 to 1996: Attorney/stockholder, Fuller, Tubb & Pomeroy, P.C., Oklahoma City, Oklahoma

1992 to 1993: Special Assistant U. S. Attorney and U. S. Attorney, Western District of Oklahoma, U. S. Department of Justice

1980, 1981, 1992 & 1993: Adjunct Instructor/Lecturer in Business Law, University of Central Oklahoma, Edmond, Oklahoma

1977 to 1992: Attorney/stockholder, Fuller, Tubb & Pomeroy, P.C.

1984 to 1992: State Representative, State of Oklahoma

1976 to 1977: United States Senate, Legislative Assistant to U. S. Senator Dewey F. Bartlett, Washington, D.C.

1974 to 1976: Clerk/legal intern, Fuller, Tubb & Pomeroy, P.C.

1974: Leonard for Congress committee, campaign coordinator.

The following do not involve "employment" but may be within the scope of the question, as organizations where I was officer, director or otherwise:

1984 to present: Fuller & Tubb; inactive investment partnership, general partner

1998 to 2001: Hunters Ridge Homeowners Association; director, president.

2000 to present: Westminster Presbyterian Church, Oklahoma City, Oklahoma (current elder, formerly a deacon)

Early 1990's: Director, Northwestern Oklahoma State University Alumni Association

Early 1980's: Director, University of Oklahoma College of Law Association

1987 to 1991: Executive Committee member, Atlantic Association of Young Political Leaders

1980: President, Central Oklahoma Young Republicans Club.

**7. Military service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

None

**8. Honors and Awards. List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Outstanding Graduate, Business & Professional, 2000, Northwestern Oklahoma State University Foundation  
Employee of the Year, 1998, Oklahoma Federal Executive Board (Supervisory/Managerial)  
Order of the Coif, University of Oklahoma College of Law (1976)  
Oklahoma Law Review, University of Oklahoma College of Law (1975-6)  
American Jurisprudence Awards in Constitutional Law and Conflicts of Law, University of Oklahoma College of Law (1975-6)  
William Randolph Hearst U. S. Senate Program scholarship (1970)

**9. Bar associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association (1976-present)  
Oklahoma Bar Association (1976-present)  
Oklahoma County Bar Association (Board of Directors, 1994 to 1996)  
Oklahoma Bar Foundation (fellow)  
American Judicature Society  
Ruth Bader Ginsburg American Inn of Court (1995-1999, Master)  
National Association of Former U. S. Attorneys (associate member)  
Judicial Screening Panel, Oklahoma County Bar Association (1994)  
Merit Selection Panel for U. S. Bankruptcy Judge, WDOK (1997-8)  
Civil Justice Advisory Committee for U. S. District Court, Western District of Oklahoma (1994-7; chairman, 1996-7)

**10. Other memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Bar Association and Oklahoma Bar Association regularly lobby; none other.

Other organizations to which I belong, in addition to those noted above, are:

Rotary Club of Oklahoma City  
Boy Scouts of America (troop committee member)  
Twin Hills Golf & Country Club  
Allied Arts of Oklahoma City  
Deer Creek Community Enrichment Foundation  
Oklahoma Heritage Association

**11. Court admissions:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Oklahoma, 1976 to present.  
U. S. District Court, Western District of Oklahoma, 1978 to present.  
U. S. Court of Appeals, Tenth Circuit, 1985 to present.

**12. Published Writings:** List the titles, publishers, and dates of books, articles, reports or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there are press reports about the speech, and they are readily available to you, please supply them.

October, 1995, report to District Court with recommendations of Civil Justice Advisory Committee on proposed local rules changes.

As a State Representative, I gave speeches relating to legislation coming before that body, some of which involved legal policy. The speeches were extemporaneous, with no prepared text or other record.

Attached are two "white papers" on tax and education issues which I co-authored during my legislative service, as well as copies of annual reports to my district which I prepared and distributed at the end of each legislative session.

"Administrative Law: Dismissal of Tenured Faculty in Oklahoma Colleges and Universities", 29 Oklahoma Law Review 370 (1976).

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. Last physical examination was May 7, 2001.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In 1982, I served as a Judge of the Temporary Court of Appeals for the State of Oklahoma, Division 193. Each temporary panel decided three civil cases assigned to it by the Supreme Court of Oklahoma. This was a process used at that time by the Oklahoma Supreme Court to work through its backlog of appeals. Apart from the Temporary Court of Appeals, I have not held judicial office.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

None.

16. **Public office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

a. I was elected to the City Council of Alva, Oklahoma, in 1972 and served on the council in 1972-3.

b. I was elected to the Oklahoma State House of Representatives, District 83, in November, 1984, and served there until my resignation in 1992 to join the U. S. Attorney's office.

c. I was appointed U. S. Attorney for the Western District of Oklahoma in August, 1992, by the Attorney General. The appointment was continued by appointment of the district court until April, 1993, when I resigned incident to the change of administration from President Bush to President Clinton.

No unsuccessful candidacies for elective office.

(As noted above, I have served as First Assistant U. S. Attorney since 1996 and also

served as Legislative Assistant to U. S. Senator Bartlett in 1976-7. I assume these are not "public offices" in the sense used by the question, but mention them in the interest of completeness.)

**17. Legal career:**

**a. Describe chronologically your law practice and experience after your graduation from law school, including:**

- 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.**
- 2. whether you practiced alone, and if so, the addresses and the dates.**
- 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.**

Immediately upon passing the bar in 1976, I went to work for U. S. Senator Dewey Bartlett in Washington as a Legislative Assistant. I worked in that capacity until November of 1977. I did not practice law during this period.

In November of 1977, I returned to Fuller, Tubb & Pomeroy, P.C., where I had worked as a clerk/intern during law school. I practiced with that firm until I joined the U. S. Attorney's office in 1992. (The firm's current address is Suite 1000, 201 Robert S. Kerr Ave., Oklahoma City, Oklahoma 73102.)

In November, 1984, I was elected to the Oklahoma House of Representatives and served there until 1992. I continued to practice law during this period, although at a reduced level because of the time demands of legislative service.

In late 1991, Senator Nickles recommended me for appointment as U. S. Attorney for the Western District of Oklahoma. I joined the office as a Special Assistant U. S. Attorney in February, 1992, and served in that role until August, 1992, when I became the U. S. Attorney. I served as U. S. Attorney (initially under appointment by the Attorney General, then by appointment from the District Court) from August 1992 until April, 1993, when I left office incident to the change of administrations.

I returned to Fuller, Tubb & Pomeroy, P.C. in April, 1993, and practiced law with the firm until I rejoined the U. S. Attorney's office in August of 1996.

I returned to the U. S. Attorney's office as First Assistant U. S. Attorney in 1996 and have served in that capacity since. For a period of approximately two years, I was Acting U. S.

Attorney while the U. S. Attorney, Patrick Ryan, was in Denver, Colorado, in connection with the Oklahoma City bombing trials of Timothy McVeigh and Terry Nichols.

- b. 1. What has been the general character of your practice, dividing it into periods with dates, if its character has changed over the years.**
- 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

My law practice experience has been of two general types: (1) private practice, focusing almost exclusively on civil matters, and (2) practice in the U. S. Attorney's office.

My private practice experience (1977-92; 1993-96) was entirely with the Fuller, Tubb & Pomeroy law firm, which varied in size from five to eight lawyers over the years. I was a shareholder of the firm. The firm's practice (and mine) was a general civil practice, with emphasis in business and commercial law. While our practice did not result in a large number of trials, as the matters involved were often susceptible of being resolved prior to trial, it did involve a significant amount of ongoing civil litigation.

During the approximately eighteen years I was with the firm, my primary practice included a broad range of business, commercial, real estate, bankruptcy, administrative and banking law matters. I handled other matters as well, including two major cases involving constitutional and tax questions in the area of state education finance, a case involving taxation and tribal jurisdiction issues in the Supreme Court of the Sac & Fox nation, and representation of the Governor of Oklahoma in litigation with the Oklahoma legislature and others over constitutional, separation of powers issues.

During the early years of my private practice, I had substantial involvement in the chartering process for state and federal banks, principally representing groups seeking bank charters. I also did substantial work for various credit unions and the state credit union trade association.

During the years following the failure of Penn Square Bank in 1982, our firm represented the bankruptcy trustee for First Penn Corporation, the holding company which owned Penn Square Bank. For that reason, and because of the financial upheavals in Oklahoma's oil and banking industries, I worked on many commercial bankruptcy matters.

During 1995-6, our firm represented the State Insurance Commissioner in his capacity as the receiver of American Standard Life Insurance Company, a company based in Enid, Oklahoma. I handled the appeal of a major case involving reinsurance and receivership issues, and worked on a variety of other receivership matters as well.



My criminal experience while at Fuller, Tubb & Pomeroy was very limited. It included three appointments to represent indigent criminal defendants in federal court, one of which resulted in a trial.

My typical clients in private practice have included banks and credit unions, trade associations, real estate sellers and purchasers, a bankruptcy trustee, as well as individuals and businesses with debtor/creditor problems.

The nature of my law practice changed substantially when I joined (and later rejoined) the U. S. Attorney's office. That office has had thirty to thirty five lawyers at various times, with a support staff of forty to fifty persons. My practice there has been primarily supervisory and managerial. As U. S. Attorney and First Assistant, I have not maintained a personal caseload but have been actively involved in plea negotiations, trial preparation, trial, appellate briefing and argument in specific cases on a regular basis. As a supervisor, I have participated in the making and implementation of policy governing the charging and disposition of all categories of criminal cases.

The U. S. Attorney's office also has an active civil practice involving both affirmative and defensive matters. My responsibility with those has been primarily supervisory, including review and approval of settlements.

- c. 1. **Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

My appearances in court have been occasional over the course of my practice.

2. **What percentage of these appearances was in:**  
 (a) federal courts  
 (b) state courts of record  
 (c) other courts

During the periods of private practice, I would estimate 35% of my appearances were in federal court, including bankruptcy court. The remaining 65% of appearances were in state court.

3. **What percentage of your litigation was:**  
 (a) civil;  
 (b) criminal.

During the periods of private practice, my litigation experience was almost 100% in civil matters. During my service in the U.S. Attorney's office, 100% of the appearances have been in connection with criminal matters.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried eighteen cases to verdict. I was sole counsel in thirteen; associate counsel in five.

5. What percentage of these trials was:  
 (a) jury;  
 (b) non-jury.

The cases were 50% jury, 50% non-jury.

18. Describe ten of the most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case,

- (a) the date of the representation;  
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
 (c) the individual name, addresses and telephone numbers of co-counsel and of counsel for each of the other parties.

(1) United States v. David L. Arney, Case No. CR-99-104-L, U. S. District Court, Western District of Oklahoma. David Arney, a Mooreland, Oklahoma, accountant and rancher was convicted of bank fraud, based on his having provided false documents to two banks purporting to be copies of his tax returns. The false returns stated income far exceeding the amount which he reported to the Internal Revenue Service. Arney was first tried in October of 1999. The jury deadlocked and a mistrial was declared. Arney was retried in December, 1999, and convicted. I was co-counsel for the government in the pretrial preparation and in both trials. I prepared the government's brief on appeal and argued the appeal to the Tenth Circuit Court of Appeals in March, 2001. The case was affirmed on April 24, 2001. United States v. Arney, 248 F.3d 984 (10<sup>th</sup> Cir. 2001). Trial judge: District Judge Tim Leonard, United States Courthouse, Oklahoma City, OK (405) 609-5300; lead counsel for the government: former AUSA Hank Hockeimer, now with Hangle, Aronchick, Segal & Pudlin, 1 Logan Square, 12<sup>th</sup> Floor, Philadelphia, PA 19103, (215) 496-7035; opposing counsel: Stephen Jones, 114 East Broadway, Suite 1100, P. O. Box 472, Enid, OK 73702-0472, (580) 242-5500.

(2) United States v. John Lewis et al., Case No. CR-99-003, U. S. District Court, Western District of Oklahoma. John Lewis, a Lawton businessman, his brother Milton Lewis and

his daughter Kathleen Freeman were charged with violation of the Lacey Act and conspiring to violate the Lacey Act (16 U.S.C. 3372), based on allegations they sought to sell elk wrongfully taken from the Wichita Mountains National Wildlife Refuge. John Lewis was found guilty of the Lacey Act violation and sentenced to a year in prison; the other defendants were found not guilty. I participated as co-counsel for the government in the pretrial preparation and trial. I prepared the government's brief on Mr. Lewis' appeal to the Tenth Circuit (no oral argument). His conviction was affirmed (United States v. Lewis, 240 F.3d 866, 10<sup>th</sup> Cir. 2001). Trial judge: District Judge Robin Cauthron, United States Courthouse, Oklahoma City, OK, (405) 609-5200; lead counsel for the government: AUSA Randy Sengel, U. S. Attorney's Office, 210 Park Ave., Oklahoma City, OK, (405) 553-8845. Opposing counsel: Carl Hughes, 5801 Broadway Extension, Suite 302, Oklahoma City, OK 73118, (405) 848-0111 (for John Lewis); Nicholas D. Garrett, 431 C Avenue, Lawton, OK 73501 (for Milton Lewis and John Lewis); Joe E. White, Jr., 900 N.E. 63<sup>rd</sup> St., Oklahoma City, OK, (405) 858-8899 (for Kathleen Freeman).

(3) United States v. Laura Fox, Case No. CR-97-211-A, U.S. District Court, Western District of Oklahoma. Fox was the office manager for a medical doctor. She was charged with bank fraud and with credit card fraud. The case was tried in July, 1998: Fox was acquitted on the bank fraud count. The jury hung on the other fraud count and a mistrial declared. The government did not retry the case and the second count was ultimately dismissed. I participated as co-counsel for the government in the pretrial preparation and the trial. Trial judge: District Judge Wayne Alley, United States Courthouse, Oklahoma City, OK, (405) 609-4303; lead counsel for the government: AUSA Vicki Behenna, U.S. Attorney's Office, 210 Park Ave., Oklahoma City, OK, (405) 553-8753; counsel for the defendant: D. Hayes Foster, 910 S.W. 50<sup>th</sup> St., Oklahoma City, OK, (405) 634-5447.

(4) Appellate and other briefing. Although I did not participate in the trials, I wrote appellate briefs for the United States in appeals to the Tenth Circuit for a number of cases. As a matter of policy, briefs in the U. S. Attorneys Office are reviewed by others for form and content, but that review resulted in no substantial changes. All cases have been affirmed on appeal (except for Jackson, which was vacated and remanded for resentencing in light of a later Supreme Court decision). Opposing counsel are not listed, since I ordinarily had no contact with them in connection with writing the brief. The significance of the following cases is that they reflect work on a broad variety of evidentiary, sentencing and other substantive issues arising in federal criminal cases, as well extensive experience in legal writing:

United States v. Alvarez, No. 98-6008, unpublished disposition, 10/15/98, 1998 WL 792067; standards for acceptance of responsibility, sentencing.

United States v. Burnett, No. 98-6224, unpublished disposition, 8/4/99, 1999 WL

569055; multiple issues including 404(b) evidence, impact of lost evidence, role in the offense for sentencing, etc.

United States v. Holley, No. 96-6388, unpublished disposition, 8/11/98, 1998 WL 476782; search and seizure issues.

United States v. Hunt, No. 98-6232, unpublished disposition, 3/6/99, 1999 WL 140415; "career offender" status in sentencing.

United States v. Jackson, No. 99-6090, 213 F.3d 1269 (10<sup>th</sup> Cir. 2000); diminished capacity defense, sufficiency of evidence, scope of relevant conduct.

United States v. Johnson, No. 00-6134, appeal dismissed, 11/28/00; appellate jurisdiction where trial court declined to depart downward based on poor health.

United States v. Jones, No. 97-6149, unpublished disposition, 1/7/98, 1998 WL 3282; drug quantities & organizer role in sentencing.

United States v. Marquez, No. 96-6202, unpublished disposition, 6/9/97, 1997 WL 307149; basis for vehicle stop, consent search.

United States v. Mendoza, No. 98-6142, 118 F.3d 707 (10<sup>th</sup> Cir. 1997); resentencing of defendant after vacation of conviction.

In addition, I have prepared briefs responding to motions to vacate convictions under 28 U.S.C. Section 2255, all filed in the U. S. District Court for the Western District of Oklahoma:

United States v. Eilers, No. CR-95-19-L; motion granted; right of government to refile charges after initial sentence vacated under Bailey v. United States.

United States v. Endsley, No. CR-95-131-C; motion denied; sentencing entrapment, D/L methamphetamine distinction, sufficiency of evidence, ineffective assistance of counsel.

United States v. Deninno, No. CR-93-55-T; motion denied 8/13/97; D/L methamphetamine distinction, ineffective assistance of counsel.

United States v. King, No. CR-96-206-M; motion denied; ineffective assistance of counsel, voluntariness of plea.

United States v. Browne, No. CR-96-108-A; motion pending; ineffective assistance of counsel; application of Apprendi decision.

(5) Keating v. Johnson, Case No. 86628, Supreme Court of Oklahoma. This case was an

original proceeding brought by the Governor of Oklahoma in the Oklahoma Supreme Court, challenging the constitutionality of the practice of legislative leaders exercising executive authority by making appointments to executive branch boards and commissions. Specific boards and commissions were named as defendants in addition to the legislative leadership. The principal basis for the suit was the separation of powers provision of the state constitution. I was lead counsel for the Governor, prepared the briefs, and argued the case to the Supreme Court in early 1996. The Supreme Court declined to assume original jurisdiction and did not reach the merits. Keating v. Johnson, 918 P.2d 51, 1996 OK 61 (1996). Co-counsel for the Governor: Duchess Bartmess, then General Counsel to the Governor, 3408 Windsor Ave., Oklahoma City, OK 73122; (405) 947-3408; two state representatives were plaintiffs and pro se co-counsel. Principal opposing counsel were: Susan B. Loving, 1505 Renaissance, Edmond, OK 73013, (405) 844-9900; and Lee Slater, 6520 N. Western, Oklahoma City, OK 73116, (405) 842-7545. Several other groups or entities also filed briefs. There are nine justices on the Oklahoma Supreme Court; Justice Marian Opala is the justice from this district and participated in consideration of the case: (405) 521-3839.

(6) State ex rel. Crawford v. Guardian Life Insurance Company of America. This case arose out of the insolvency receivership of American Standard Life & Accident Insurance Company. My firm represented the State Insurance Commissioner in his capacity as Receiver. Prior to my firm's representation of the Receiver, a judgment of over fifteen million dollars had been obtained against Guardian based on obligations it had under a reinsurance agreement with American Standard and on the impact of a state statute addressing a reinsurer's right of setoff in insolvency proceedings of the insured. The state setoff statute had been amended after the reinsurance treaty involved in the case was entered into but prior to the insolvency of American Standard. The principal issue was whether the change applied to this case. I was lead counsel for the Receiver during the appeal of the case and was the principal drafter of the briefs submitted (co-counsel with Michael Hassan, Lord, Bissell & Brook, Chicago, who prepared one portion of the briefs). The judgment was affirmed by the Oklahoma Court of Appeals in an unreported decision. The Oklahoma Supreme Court granted certiorari and reversed, setting aside the judgment. Crawford v. Guardian, 954 P.2d 1235, 1997 OK 10 (1998). The case involved complex factual and legal issues involving insurance and reinsurance, insolvency proceedings, statutory construction and constitutional issues. Principal opposing counsel was C. Wayne Litchfield, 5555 N.W. Grand Blvd., Oklahoma City, OK 73112, (405) 943-9090. Several entities filed amicus briefs (see opinion); most active among them was James W. Rhodes, Kerr, Irvine, Rhodes & Ables, Suite 600, Bank of Oklahoma Plaza, Oklahoma City, OK, (405) 272-9221, representing the Oklahoma Life & Health Insurance Guaranty Association.

(7) In re First Penn Corporation, Case No. 82-1667-B, United States Bankruptcy Court, Western District of Oklahoma. My firm represented Kenneth L. Spears in his capacity as bankruptcy trustee of First Penn Corporation, the holding company which owned Penn

Square Bank. The failure of Penn Square Bank in the early 1980's triggered massive financial dislocations in Oklahoma and elsewhere. As the parent of the Bank, First Penn was affected by many of the controversial transactions of the Bank and was involved in the litigation which arose out of it. I was involved (normally as co-counsel with Jerry Tubb or David Pomeroy, see above) in a broad range of issues and litigation in the case, including research of law, preparation of pleadings, conduct of discovery, various pretrial and other proceedings, extensive settlement negotiations, and trial and appellate briefing. Among the principal matters arising out of this bankruptcy case was litigation over ownership of the Bank's physical facility, which was resolved on summary judgment and resulted in an appeal to the Tenth Circuit Court of Appeals. In re First Penn Corporation, 793 F.2d 270 (10<sup>th</sup> Cir. 1986)(reversed in part; affirmed in part). I argued the appeal. U. S. District Judge Lee R. West, United States Courthouse, Oklahoma City, OK, (405) 609-5140; principal opposing counsel, V. Burns Hargis, Bank of Oklahoma, 201 Robert S. Kerr Ave., Oklahoma City, OK 73102, (405) 272-2000. Other significant litigation arising out of the First Penn bankruptcy was Kenneth L. Spears, Trustee v. FDIC, Adv. No. 84-509. This case involved extensive litigation with the FDIC regarding disputed ownership of loan participation interests, disputed ownership of approximately \$4.7 million in state and federal tax refunds, bankers blanket bond claims, subordination issues, and others. My participation in this matter was similar to that noted for the facility case above. Following extensive pretrial proceedings, the case was settled on a basis felt by the Trustee and First Penn's creditors to be favorable. Judge: initially Bankruptcy Judge Robert L. Berry (now deceased), later Bankruptcy Judge Paul B. Lindsey, now retired, 1404 Kenilworth, Oklahoma City, OK 73120, (405) 843-6510. V. Burns Hargis was principal opposing counsel. These matters occurred in the 1982-1988 period.

(8) Fair School Finance Council of Oklahoma Inc. v. State of Oklahoma, 746 P.2d 1135 (Supreme Court of Oklahoma, 1987). I represented ninety Oklahoma school districts which intervened in litigation challenging the constitutionality of Oklahoma's school finance structure, during the 1980-1985 time frame. Plaintiffs asserted that state and federal constitutional provisions mandated changes in the school finance structure. Trial court (Harold C. Theus, Judge, now deceased) entered judgment favorable to my clients, rejecting plaintiff's constitutional claims. The judgment was affirmed by the Oklahoma Supreme Court. As counsel for the intervenors, I was principal counsel in proceedings in the trial court and prepared the appellate briefs for intervenors. (I withdrew from representation of the group upon my election to the Oklahoma legislature; briefing was complete at that point). Opposing counsel was M. David Riggs, Riggs, Abney, Neal, Turpen, Orbison & Lewis, P. O. Box 1046, Tulsa, OK 74101, (918) 587-3161.

(9) Bernard Parsons v. Select Development Corporation, Case No. C-86-168, District Court of Logan County, Oklahoma. This case was a mortgage foreclosure involving an entire subdivision. The time frame was 1986-7. Although the underlying claim was straightforward (foreclosure), the case was factually complex, involving approximately 52 tracts of land and 120 defendants, some of whom asserted counterclaims for fraud or

related theories. I handled all aspects of the case, including pleadings, briefing, trial court appearances, settlement negotiations and examination of title on the tracts involved. The case was settled as to certain tracts through negotiation with the FDIC and others. The trial court entered summary judgment as to the remaining defendants. Trial judge: Donald Worthington, Payne County Courthouse, Stillwater, OK 74074, (405) 372-3624. Opposing counsel included Alan E. Synar, 1900 S. Broadway, Edmond, OK 73013, (405) 341-6551; Stephen G. Solomon, 4800 Lincoln Blvd., Oklahoma City, OK 73105, (405) 528-6569.

(10) United States v. William Gene Eaton, Case No. CR-83-239-E, U. S. District Court for the Western District of Oklahoma. I was appointed to represent Mr. Eaton, who, along with a co-defendant, was charged with bank robbery. I handled all aspects of Eaton's defense. The co-defendant pleaded guilty and testified against Eaton who was convicted by the jury on December 29, 1983. Judge: U. S. District Judge Luther Eubanks (now deceased). Counsel for the government: FAUSA John E. Green, now retired from government service, 1312 N.E. 53<sup>rd</sup>, Oklahoma City, OK 73111, (405) 427-0584.

**19. Legal activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

Apart from those matters mentioned above, my most significant legal activities have related to supervisory and management responsibilities in the U. S. Attorney's office, Western District of Oklahoma. I have been First Assistant U. S. Attorney for the past five years. For approximately two years of that period, I was Acting U. S. Attorney while the U. S. Attorney was in Denver for, or was otherwise fully occupied with, the prosecution of Timothy McVeigh and Terry Nichols for the bombing of the Murrah building in Oklahoma City. As First Assistant and/or Acting U. S. Attorney, I have participated in a broad range of investigative, charging and other decisions in criminal cases, as well as participating in trial preparation, trial and appellate briefing on a variety of cases. I have also had supervisory involvement in affirmative and defensive civil matters handled by the office, ordinarily in the context of settlement negotiations and approvals.

Most recently, I have served as Acting U. S. Attorney with respect to remaining OKBomb matters in the Western District of Oklahoma. The OKBomb investigation has been handled as a national, rather than Western District, case, but the Western District continues to serve a coordinating function with victims of the Oklahoma City bombing, particularly in connection with the execution of Timothy McVeigh. I have participated in a broad variety of liaison functions with the victims and various components of the

Department of Justice, as well as handling press inquiries related to the victims.

My state legislative service from 1984 to 1992 was not a "legal activity" in the sense of practicing law, but did give me experience with the lawmaking branch of our legal system and exposure to a broad range of citizen concerns and issues. I served as a member of the House Judiciary Committee for the seven years I was in the Legislature.



II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am a vested participant in the Oklahoma Public Employees Retirement System, based on my legislative service. Eligible at age 62; defined benefit plan.

As a federal employee, I participate in the Thrift Savings Plan.

None other.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will be recused from hearing any case or matter that was handled by the U. S. Attorney's office while I was First Assistant. I anticipate a procedure like that used for previous U.S. Attorneys who have become District Judges: disqualification from all cases involving the U. S. Attorney's office for a period of months, followed by a case-by-case examination thereafter, based on the office certifying whether the case or matter originated during my service in the office.

I will be alert to identifying, and recusing from, any case involving an entity in which I have a financial interest. Local court rules which require the early identification of parent or related corporations of any corporate party will assist in this process.

I anticipate recusing from any matter involving my former law firm, Fuller, Tubb & Pomeroy, P.C. so long as I continue to have an interest in the (inactive) investment partnership I have with certain of my former partners (Fuller & Tubb partnership).

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

4. List the sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends,

interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Form AO-10, dated August 1, 2001, is attached.

**5. Please complete the attached financial net worth statement in detail (add schedules as called for).**

See attached.

**6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

1994: Chairman of campaign committee, Mike Hunter for Attorney General (Oklahoma Attorney General). Apart from informally advising the candidate from time to time or attending campaign functions, the position was honorary.

1984, 1986, 1988 and 1990: I was a candidate for, and elected to, the Oklahoma House of Representatives, District 83.

1988: Alternate delegate to the Republican National Convention. Had previously endorsed Bob Dole for President, along with other legislators.

1980: District chairman (state house district), Reagan for President; involved identifying and getting Reagan supporters to precinct meetings where delegates were selected.

1974: Campaign coordinator, Tim Leonard for Congress (6<sup>th</sup> District, Oklahoma). I worked fulltime during the summer, attended functions, met/organized supporters, press contacts, general campaign duties.

1972: I was a candidate for, and elected to, the City Council of Alva, Oklahoma.

1970 & 1972: Local coordinator, Alva, Oklahoma, Young Oklahomans for Bartlett (Governor and U. S. Senate).

1968: Local coordinator, Alva, Oklahoma, Young Oklahomans for Beilmon (U. S. Senate).

AO-10 (rev)  
R. 1/2000

# FINANCIAL DISCLOSURE REPORT

## Nomination Report

Report required by the Judicial  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Heaton, Joe L.		2. Court or Organization Western District of Oklahoma	3. Date of Report 08/01/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. District Judge - nominee		5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 08/02/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 08/01/2001
7. Chambers or Office Address 210 Park Avenue Suite 400 Oklahoma City, Oklahoma 73102		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			

### I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 General Partner	Fuller & Tubb, a partnership (inactive investment partnership; sole asset is interest in VMS Residential Portfolio I)
2 Director/President	Hunters Ridge Homeowners Association
3 Custodian UGMA	Brokerage accounts for minor children; bank accounts for minor children

### II. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 N/A	Oklahoma Public Employees Retirement System - vested. Eligible at age 62.
2 N/A	U. S. Government (Thrift Savings Plan; retirement & other employee benefits)
3	

### III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input checked="" type="checkbox"/> NONE (No reportable non-investment income.)		
1 None		
2		
3		
4		

FINANCIAL DISCLOSURE REPORT	Reaton, Joe L.	08/01/2001
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**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	NONE	EXEMPT
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	NONE	EXEMPT	
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	NONE		
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

## 1 Heatcn, Joe L.

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

08/01/2001

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

[illegible]

FINANCIAL DISCLOSURE REPORT										HEATON, JOE L.		DATE OF REPORT 08/01/2001	
VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)													
A. Description of Assets (including trust assets)  Place "00" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period								
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure							
						(2) Date: Month- Day	(3) Value: Code (J-P)	(4) Gain: Code (A-H)	(5) Identity of buyer/seller (if private transaction)				
NONE (No reportable income, assets, or transactions.)													
18 Boydview Corp. common stock	A	Dividend	K	U	Exempt								
19 Hollywood Shopping Center LLC, Norman, OK	D	Rent	J	U	Exempt								
20 West Oaks Rentals, gen. part., Norman, OK office building	K	Rent	J	U	Exempt								
21 Norman Builders Supply common stock		None	K	U	Exempt								
22 Norman Construction & Paving common stock		None	J	U	Exempt								
23 Individual Retirement Trust #1	E	Dividend	M	T	Exempt								
24 - Smith Barney Large Cap Value Fund													
25 - Amcap Fund													
26 - Investment Company of America													
27 - TRAK funds													
28 - Smith Barney Small Cap Growth Fund													
29 - Smith Barney Small Cap Value Fund													
30 - Smith Barney Intern. Aggressive Growth Fund													
31 - Smith Barney Large Cap Growth Fund													
32 - Smith Barney Intern. All Cap Growth Fund													
33 - Smith Barney Prem. Sel. All Cap Growth Fund													
34 - Smith Barney money funds													
1 Incl Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 I2=\$5,000,001 or more E=\$15,001-\$50,000													
2 Val Codes: J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more													
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market													

**FINANCIAL DISCLOSURE REPORT** Name of person reporting: Reston, Joe L. Date of Report: 08/01/2001

**VII. Page 3 INVESTMENTS and TRUSTS— income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income/assets, or transactions.)									
35 Individual Retirement Trust #2	D	Dividend	M	T	Exempt				
36 - Smith Barney Large Cap Value Fund									
37 - Amcap Fund									
38 - Investment Company of America									
39 - Smith Barney Small Cap Growth Fund									
40 - Smith Barney Small Cap Value Fund									
41 - Smith Barney Intern. Aggressive Growth fund									
42 - Smith Barney Large Cap Growth Fund									
43 - Smith Barney Intern. All Cap Growth Fund									
44 - Smith Barney money funds									
45 - Smith Barney Prem. Sel. All Cap Growth Fund									
46 Custodial Account #1	D		M	T	Exempt				
47 - Smith Barney money funds									
48 - Bank of Oklahoma savings account									
49 - Smith Barney Large Cap Value Fund									
50 - Growth Fund of America									
51 - Smith Barney Small Cap Growth Fund									

1 In/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) U=Book Value V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT										Name of Person Reporting Heaton, Joe L.		Date of Report 06/01/2001	
VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions (includes those of spouse and dependent children. See pp. 36-54 of Instructions.)													
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period								
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure							
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)				
NONE (No reportable income, assets, or transactions.)													
52 - 323 East Mosier LP, Ltd. part. interest													
53 - Masterpiece Properties LP, Ltd. part. interest													
54 - Meadowood II LP, Ltd. part. interest													
55 - Meadowood II LP, Ltd. part. interest													
56 Custodial Account #2	D		M	T	Exempt								
57 - Smith Barney money funds													
58 - Bank of Oklahoma savings account													
59 - Smith Barney Large Cap Value Fund													
60 - Growth Fund of America													
61 - 323 East Mosier LP, Ltd. part. interest													
62 - Masterpiece Properties LP, Ltd. part. interest													
63 - Meadowood II LP, Ltd. part. interest													
64													
65													
66													
67													
68													

1 Inco/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			



FINANCIAL DISCLOSURE REPORT	Heston, Joe L.	08/01/2001
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# VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

1. The value of the oil & gas working interest identified in Part VII, line 3, is based on average monthly income during the period X 36 months. The wells are located in Oklahoma (Folmar) and McClain (Lewis 1-11 and Mooney) Counties, Oklahoma.
2. As to the custodial accounts shown in Part VII, filer is the custodian of the bank account and assets in brokerage account. Spouse is custodian as to limited partnership interests. Valuations of publicly traded funds are based on cash/market; values of limited partnerships interests are based on book value.
3. The limited partnership interests identified in Part VII, lines 15, 16, 17 and 19 also had interest income in addition to rental income (per K-1). K-1 for the S-corp shown at line 18 shows dividend, rent and interest income. (Software only permits a single type to be shown.)

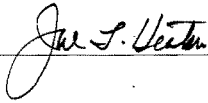
FINANCIAL DISCLOSURE REPORT	NAME OF CLAIMS REPORTING	DATE OF REPORT
	Heaton, Joe L.	08/01/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

8/6/01

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

## JOE L. HEATON AND IMMEDIATE FAMILY\*

FINANCIAL STATEMENT  
NET WORTH

July 1, 2001

Please provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings), all liabilities (including debts, mortgages, loans and other financial obligations) of yourself, your spouse, and other immediate members of your household.

<u>ASSETS</u>		<u>LIABILITIES</u>	
Cash on hand and in banks	\$ 7550	Notes payable to banks - secured	\$ 0
U. S. Gov't. Securities	0	Notes payable to banks - unsec.	0
Listed securities - add schedule	753,085	Notes payable to relatives	0
Unlisted securities - add schedule	662,495	Notes payable to others	0
Accounts and Notes receivable	0	Accounts and bills due	1,000
Due from relatives/friends	0	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mtgs. payable	0
Real Estate owned - add schedule	342,162	Chattel mtgs. and other liens	13,767
Autos and other personal property**	34,000		
Cash value - life insurance	0		
Other assets -estate expect./aunt	1,000		
Thrift Savings Plan	<u>75,303</u>	Total Liabilities	\$ 13,767
Total Assets	\$1,875,595	Net Worth	1,861,828
		Total Liab. & Net Worth	1,875,595

<u>CONTINGENT LIABILITIES</u>		<u>GENERAL INFORMATION</u>	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule.) Only personal auto, to Ford Credit.	
On leases or contracts	0	Are you defendant in any suits or legal proceedings? No.	
Legal claims	0	Have you ever taken bankruptcy? No.	
Provision for Federal Income Tax	0		
Other special debt	0		

\* Includes separate assets of spouse and children, and individual retirement accounts.

\*\* Excludes household goods, clothing etc. - value unknown.

**SUPPORTING SCHEDULES FOR**  
**FINANCIAL STATEMENT - NET WORTH**  
**JOE L. HEATON AND FAMILY**

July 1, 2001

Listed Securities:

Duke Energy Co. common stock	\$	57,760
Xcel Energy Co. common stock		28,870
Smith Barney money funds		25,376
Smith Barney Large Cap Value Fund		132,964
Smith Barney Intern. All Cap Growth Fund		12,471
Smith Barney PS All Cap Growth Fund		132,373
Texas State Vet. Land Com. bonds		10,277
Amcap Fund		89,869
Investment Co. of America		185,089
Growth Fund of America		62,286
Okla. Dev. Finance Auth. - St. John's Health System bonds		<u>15,730</u>

Total Listed Securities	\$	753,085
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Unlisted Securities:

323 East Mosier Limited Partnership	\$	153,266
Masterpiece Properties LP		201,025
Meadowood II LP		250,532
Woods-Barbour account		611
Boydview Corporation stock		17,802
Hollywood Shopping Center LLC		4,964
West Oaks Rentals partnership		-0-
Norman Builders Supply Co. Inc. stock		21,945
Norman Construction & Paving Co. stock		12,350
Fuller & Tubb, a partnership		<u>-0-</u>

Total Unlisted Securities	\$	662,495
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Real Estate owned:

Home	\$	334,584
Oil & gas working interest		<u>7,578</u>
Total real estate	\$	342,162

III. GENERAL (PUBLIC)

**1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I served as court-appointed counsel to indigent criminal defendants in federal court, 1979, 1981, and 1983; each case involved significant time in excess of the minimal amounts paid by the court. I regularly participate in the annual "ask a lawyer" program sponsored by Oklahoma Bar Association, which provides free legal advice. I am a longtime financial supporter of Legal Aid of Western Oklahoma. I participated in the county bar sponsored program providing for free legal services to victims of the Oklahoma City bombing. Through my church, Rotary Club, and otherwise, I have participated in service projects for the Salvation Army, Christmas in April, Kids We Care, and others.

**2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates – through either formal membership requirements or the practical implementation of membership policies. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

None. I was in Cub Scouts and Boy Scouts from approximately 1960-1968, and more recently as a troop committee member; membership is limited to boys. I was a member of the Methodist Church until 1984, and since then a member of Westminster Presbyterian Church; membership is limited to those of the particular religious faith. From 1989-1992, I was a member of the Oklahoma City Dinner Club, which met four times a year to hear speakers (did not have its own facilities); as a practical matter, it was a men's dinner club. I do not understand these membership practices to be invidious within the meaning of the commentary.

**3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There was no selection commission used. In June, 2000, I wrote Oklahoma's U. S. Senators expressing my interest in being considered for one of the two vacancies existing on the U. S. District court bench. In late 2000 and early 2001, Senator Nickles and

Senator Inhofe interviewed me separately regarding my interest. Following the Senators' recommendation of me to the White House, I was interviewed by attorneys in the White House counsel's office in May, 2001. I was interviewed by the FBI in June, 2001, as part of the FBI background check. I was interviewed in July, 2001, by a DOJ lawyer in connection with the Department's evaluation of my background.

**4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.**

No.

**5. Please discuss your views on the following criticism involving "judicial activism". The role of the federal judiciary within the federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.**

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals.
- c. A tendency by the judiciary to impose broad, affirmatives duties upon governments and society.
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In general, a judge's proper role is to identify the law and apply it to the parties and circumstances appearing before him or her. A court case should not be viewed as a vehicle for advancing the personal or policy preferences of the judge or of others, but for applying the law as best the judge can objectively determine it.

Federal courts play a critical role in protecting the constitutional rights of individual Americans. Where constitutional rights are implicated, a judge should protect those

rights and do so vigorously. However, so long as constitutional standards are met, a judge should avoid second-guessing the policy choices of the elected branches of government and should seek to apply the legal standards enacted by them to the cases before the court. Similarly, a judge should recognize that he or she is bound by the legal standards established by the higher appellate courts and apply them conscientiously.

Senator FEINSTEIN. Thank you very much.  
Mr. Land?

**STATEMENT OF CLAY D. LAND, NOMINEE TO BE DISTRICT  
JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA**

Mr. LAND. Thank you, Madam Chairperson. I have a five, eight, and 11-year-old and I have found that their schedules are far more complicated than mine.

Senator FEINSTEIN. I am sure that is right.  
[Laughter.]

Mr. LAND. Neither they nor my wife were able to be here. My five-year-old gave me some good advice as I left, I believe it was yesterday or the day before. He said, "Daddy, just don't mess up," so I will try not to do that.

[Laughter.]

Senator FEINSTEIN. Thank you.

[The biographical information of Mr. Land follows.]



CLAY D. LAND

RESPONSES TO SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Response: Clay Daniel Land

2. Address: List current place of residence and office address.

Response: Columbus, Georgia  
(Residence)

P.O. Box 2848  
Columbus, Georgia 31902  
(Office mailing address)

1425 Wynnton Road  
Columbus, Georgia 31906  
(Office street address)

3. Date and place of birth.

Response: March 24, 1960  
Shreveport, Louisiana

4. Marital Status (include maiden name of wife, or husband's name).  
List spouse's occupation, employer's name and business address.

Response: Married to Shannon Fedler Land since July 19, 1986.  
Maiden name: Shannon Michelle Fedler  
Spouse's Occupation: Attorney (not actively practicing)

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Response: University of Georgia Law School  
 Attended 1982-1985  
 J.D. degree received *cum laude* 1985

University of Georgia  
 Attended 1978-1982  
 BBA degree received *magna cum laude* 1982

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Response: Office of Senator Sam Nunn  
 Washington, D.C.  
 Summer Intern  
 Summer 1982

Hatcher, Stubbs, Land, Hollis & Rothschild  
 Columbus, Georgia  
 Summer Law Clerk  
 Summer 1983

King & Spalding  
 Atlanta, Georgia  
 Summer Associate  
 Summer 1984

University of Georgia  
 Athens, Georgia  
 Business Law Teaching Assistant  
 Fall 1984-Spring 1985

Hatcher, Stubbs, Land, Hollis & Rothschild  
 Columbus, Georgia  
 Associate  
 1985-1989

Hatcher, Stubbs, Land, Hollis & Rothschild  
 Columbus, Georgia  
 Partner  
 1989-1992

Buchanan & Land, LLP  
Columbus, Georgia  
Partner  
1992-present

Columbus Consolidated Government  
Columbus, Georgia  
Elected Member of City Council  
1993-1994

State of Georgia  
State Senator, Georgia General Assembly  
1995-2000

Columbus Bank & Trust Company  
Columbus, Georgia  
Advisory Board  
1998-present

Land, Inc.  
Columbus, Georgia  
Board of Directors  
1995-present

Springer Opera House, Inc.  
Columbus, Georgia  
Board of Directors  
1999-present

Twin Cedars Youth Services, Inc.  
Columbus, Georgia  
Board of Directors  
1998-present

7. Military Service: Have you had any military service?

Response: No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Response: Castellow Scholarship, University of Georgia Law School  
Order of the Coif  
Georgia Law Review  
Phi Kappa Phi

ODK  
Sphinx Club, University of Georgia

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Response: State Bar of Georgia

Columbus Bar Association

American Bar Association

Senate Judiciary Committee, Georgia General Assembly  
1995-2000

Georgia Indigent Defense Council  
Chairman—1993

Columbus Pro Bono Project Committee  
Co-chairman—1990/1991

Georgia Bar Foundation  
Trustee—1993

Senate Study Committee on Civil Justice Reform  
Chairman

Senate Structured Sentencing Commission

Child Support Review Commission

Election Code Revision Committee

Senate Study Committee on Foster Care and Adoption

State Bar Court Filings Committee  
Ex Officio Member

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Response:

Twin Cedars Youth Services, Inc. depends upon government funding for its operations and may lobby for state funding as well as issues affecting at risk and abused children.

The Springer Opera House lobbies for partial state funding of its operations.

Other organizations to which I belong, which I do not believe are actively engaged in lobbying, include First Baptist Church of Columbus, Sons of the American Revolution (Coweta Falls Chapter), University of Georgia National Alumni Association (board member), The Columbus Museum, Historic Columbus Foundation, Green Island Country Club (my wife is actually the member), and Tulakes Community Club.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Response: Supreme Court of the United States  
Admitted: 1/10/94

United States Court of Appeals, 11<sup>th</sup> Circuit  
Admitted: I believe I was admitted shortly after being admitted to the Georgia Supreme Court in 1985. I have been readmitted most recently in 1994 and 1999, and to the best of my knowledge, have had no lapse in membership.

U.S. District Court, Middle District of Georgia  
Admitted: I believe I was admitted shortly after being admitted to the Georgia Supreme Court in 1985. To the best of my knowledge, there has been no lapse in membership.

U.S. District Court, Northern District of Georgia  
Admitted: I believe I was admitted shortly after being admitted to the Georgia Supreme Court in 1985. To the best of my knowledge, there has been no lapse in membership.

Supreme Court of Georgia  
Admitted: 10/3/85

Court of Appeals of Georgia  
Admitted: 10/3/85

Georgia Trial Courts  
Admitted: 1985

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Response: "U.C.C. Section 9-307(1) and the Non-possessory Buyer: Is the Good Faith Purchaser Always Right?," 19 Ga. Law Rev. 123 (1984)

The following guest columns were published by newspapers (I have attached copies of them to these responses):

"Scorched Earth Politics Sully Public Service," Atlanta-Journal Constitution (4/2/2000)

"What I'll Miss and Won't Miss About Politics," Columbus Ledger Enquirer (3/27/2000)

"What I Learned When I Went Back to School," Columbus Ledger Enquirer (2/16/2000)

"Barnes' Plan Adds to Bureaucracy," Columbus Ledger Enquirer (1/19/2000)

"Transit Authority Plan has Flaws," Atlanta Journal-Constitution (3/17/99)

"Early Hope—No Slap at Teachers," Columbus Ledger Enquirer (2/16/99)

I made numerous speeches during my six years in the Georgia Senate. However, the vast majority of those speeches were based upon notes and not delivered from a formal, prepared text. I did not retain the notes. I can only recall one speech that I delivered from a formal, prepared

text and that was my farewell speech which was published in the newspaper and is listed above.

13. Health: What is the present state of your health? List the date of your last physical examination.

Response: Good. 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Response: None.

15. Citations: If you are or have been a judge, provide:....

Response: Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Response: State Senator, 16<sup>th</sup> District, Georgia General Assembly  
1995-2000  
Elected

City Councilor, Columbus Consolidated Government  
1993-1994  
Elected

No unsuccessful candidacies.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
2. whether you practiced alone, and if so, the addresses and dates;
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you

have been connected, and the nature of your connection with each;

Response: Upon graduation from law school in 1985, I returned to my hometown of Columbus, Georgia and began the practice of law with the general service law firm, Hatcher, Stubbs, Land, Hollis & Rothschild, which at that time was the largest firm in Columbus. After practicing almost exclusively in the litigation area there for four years, I became a partner in the firm in 1989. I continued as a partner in the firm focusing on litigation until 1992 when another partner and I left to start our own litigation firm Buchanan & Land, LLP. I have practiced law as a partner of Buchanan & Land, LLP from 1992 to present.

Hatcher, Stubbs, Land, Hollis & Rothschild  
P.O. Box 2707  
Columbus, Georgia 31902

Buchanan & Land, LLP  
P.O. Box 2848  
Columbus, Georgia 31902

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years.
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Response: During my law practice, I have engaged almost exclusively in civil litigation. That litigation, however, has included a wide variety of matters. During the period 1985 to 1992, I was engaged primarily in insurance defense litigation, representing a wide variety of insurance companies and their insureds.

From 1992 to present, I have remained engaged almost exclusively in civil litigation, but the extent of my insurance defense practice has decreased with a corresponding increase in the representation of individuals who have various types of damage claims. My current firm's litigation practice is fairly balanced between the representation of individuals (plaintiffs and defendants), institutions and insurance companies (primarily as defendants), and businesses in a variety of commercial matters.



My federal court practice has included cases involving the Flammable Fabrics Act, the Fair Credit Reporting Act, Title VII, and diversity of citizenship.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:

- a) federal courts;
- b) state courts of record;
- c) other courts.

3. What percentage of your litigation was:

- a) civil
- b) criminal

4. State the number of cases in courts of record you have tried to verdict or judgment (rather than settled), indicating whether you were the sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:

- a) jury;
- b) non-jury

Response: The frequency of my court appearances has varied and has included jury trials, bench trials, motion hearings, and appellate arguments. As with most civil litigation practices, the vast majority of the cases in which I have been involved have been resolved prior to trial. I keep no statistics or "scorecards" for my cases, and therefore, the estimates below are rough approximations and based primarily upon my general recollection, particularly for the period prior to 1992 when I was with another firm.

I would estimate that approximately 15%-20% of my court appearances have been in federal court with the remainder in state courts of record.

One hundred percent of my litigation has been civil.

Regarding jury trials, in the early days of my law practice, I handled a high volume of personal injury road wreck cases that I defended for various liability insurance carriers, most of which would settle after discovery, but some of which would proceed to trial. I have a very sketchy recollection of those specific cases and since they were handled at my previous firm, I have no records on those cases. I would estimate that I have been sole or lead counsel in 12-15 trials that have gone to verdict or judgment. Ninety percent or more have been jury trials. To the best of my recollection, I have acted as sole or lead counsel in approximately 5 jury trials in federal court that have gone to verdict and one non-jury federal court trial.

These estimates do not include court appearances for numerous hearings on various motions, including motions for summary judgment; nor do they include appellate court appearances.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a) the date of representation;
- b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Response:

1. Barbara Vining vs. Walmart Stores, Inc., U.S. District Court, Middle District of Georgia, Civil Action Number 4:97-CV-49

My Client: Barbara Vining, Plaintiff

Nature of my participation: Lead Counsel. I prepared the pleadings, conducted the discovery, gave the opening statement and closing argument at trial, conducted the direct examination and cross examination of witnesses at trial.

Date of Representation: 1997-1998

Judge: J. Robert Elliott

Co-counsel: Jerry A. Buchanan  
P.O. Box 2848  
Columbus, Georgia 31902  
Telephone: 706-323-2848

Opposing Counsel: Tony Rowell  
Hall, Booth, Smith & Slover  
220 E. Second Street, Suite B  
Tifton, Georgia 31794  
Telephone: 229-382-0515

Disposition: Jury Verdict/Judgment for Plaintiff--\$395,000.00

Summary: This case arose from a fall by the plaintiff while shopping at a Walmart store in Columbus, Georgia. She suffered injuries to her back and tail bone in the fall and developed chronic pain. This is believed to be one of the highest slip and fall jury verdicts in the Columbus area.

2. Kay Jones, as Executor of the Estate of Lucy Trotter vs. Oak Manor Nursing Home, Inc., State Court of Muscogee County, Georgia, Civil Action No. SC94CV-1027

My Client: Kay Jones, Plaintiff

Nature of my participation: Co-lead counsel. I prepared pleadings, conducted discovery, prepared witnesses for trial, and conducted examinations of medical experts at trial. Case settled mid-way through the trial.

Date of representation: 1994-1996

Judge: Andrew Prather

Co-counsel: Charles A. Gower  
1425 Wynnton Road  
Columbus, Georgia 31906  
Telephone: 706-324-5685

Opposing Counsel: Emmitt Griggs  
Chambless, Higdon & Carson  
P.O. Box 246  
Macon, Georgia 31202  
Telephone: 478-745-1181

Disposition: Substantial (confidential) settlement after one week of trial.

Summary: This case arose from the death of a nursing home resident who developed significant pressure sores in a nursing home. This settlement is believed to be one of the first significant settlements against a nursing home in the Columbus, Georgia area.

3. Dougherty McKinnon & Luby, P.C. et al vs. Greenwald, et al., Georgia Court of Appeals, 213 Ga. App. 891, 447 S.E.2d 94 (1994) and 225 Ga. App. 762, 484 S.E.2d 722 (1997)

My Client: Greenwald et al, Defendants/Counterclaimants

Nature of my participation: Lead counsel. I prepared and reviewed pleadings, motions for summary judgment, and appellate briefs; and made the oral arguments at trial level and on appeal.

Date of representation: 1993-1998

Trial Judge: William J. Smith

Co-counsel: Benjamin A. Land, Buchanan & Land, LLP

Opposing Counsel: Joseph Waldrep  
Hatcher, Stubbs, Land, Hollis & Rothschild  
P.O. Box 2707  
Columbus, Georgia 31902  
Telephone: 706-324-0201

Disposition: Summary Judgments affirmed on appeal in favor of our clients.

Summary: This case arose from the break up of a public accounting firm. After the breakup, our clients were sued by their former partners under "covenant not to compete" contained in a termination agreement. They sought damages based upon our clients' alleged taking of clients of the former firm. Our clients sought to strike down the restrictive covenant and also filed a

counterclaim seeking recovery for what they had paid for their shares in the former firm and for loans made to the former firm. The trial court granted our motion for summary judgment holding that the covenant not to compete was unenforceable. This summary judgment was affirmed by the Court of Appeals. The trial court subsequently granted our motion for summary judgment on the counterclaim. This summary judgment was likewise affirmed.

4. Viau vs. Fred Dean, Inc., et al. Georgia Court of Appeals, 203 Ga. App. 801, 418 S.E. 2d 604 (1992)

My clients: Fred Dean, Inc. and Fred Dean, Defendants

Nature of my participation: Lead Counsel. I prepared the pleadings, conducted the discovery, prepared the motion for summary judgment and appellate briefs, and made the oral argument.

Date of representation: 1991-1993

Trial Judge: Robert Johnston

Opposing Counsel: Jim Butler, Jr.  
Butler, Wooten et al  
P.O. Box 2766  
Columbus, Georgia 31902  
Telephone: 706-322-1990

Disposition: Court of Appeals ruled in our (defendants) favor on summary judgment issues, thus leading to subsequent settlement of case.

Summary: This case arose from serious personal injuries caused by a motor vehicle collision involving the individual defendant who was allegedly intoxicated. Plaintiffs also sought to hold the individual defendant's business liable based upon various theories. The Court of Appeals held as a matter of law that the individual defendant's company could not be held liable. The Court of Appeals further held that the legislatively enacted \$250,000 punitive damages cap applied in this case even though the defendant was allegedly intoxicated at the time of the wreck. This is believed to be one of the first cases addressing the Georgia punitive damages cap in this context.

5. Gilbert Mead, as Administrator of the Estate of Dorothy Mead vs. Oak Manor Nursing Home, Inc., Superior Court of Muscogee County Georgia, Civil Action Number SU99CV4266

My Client: Gilbert Mead, Plaintiff

Nature of my participation: Co-lead counsel. I prepared pleadings, conducted discovery, and actively participated in mediation.

Date of representation: 1999-2001

Trial Judge: Kenneth Followill

Co-counsel: Jason Crawford  
Butler, Wooten et al  
P.O. Box 2766  
Columbus, Georgia 31902  
Telephone: 706-322-1990

Opposing Counsel: Adam Appel  
Carlock, Copeland, Semler and Stair  
P.O. Box 56887  
Atlanta, Georgia 30343  
Telephone: 404-221-2240

Final Disposition: Substantial (confidential) settlement just prior to trial during mediation conference.

Summary: This case arose from the death of a nursing home resident who developed serious pressure sores at the defendant nursing home.

6. Wayne Barber vs. State of Georgia, U.S. District Court, Middle District of Georgia

My Client: Wayne Barber, Plaintiff

Nature of my representation: Appointed by Judge to act as lead counsel for Plaintiff, an inmate at the Rutledge Correctional Institute. I conducted the bench trial on behalf of the plaintiff.

Date of Representation: Pre-1992. This file is in storage at my former firm, and I do not have a record of the civil action number.

If it is needed, please let me know, and I will make arrangements with my former firm to retrieve it from their storage facility.

Judge: J. Robert Elliott

Opposing Counsel: Michael Hobbs  
Georgia Attorney General's Office  
40 Capitol Square  
Atlanta, Georgia 30334  
Telephone: 404-656-2218

Final Disposition: At the urging of Judge Elliott, Georgia Department of Corrections took certain actions to address concerns of plaintiff.

Summary: This case arose from a pro se complaint filed by a prisoner at the Rutledge Correctional Institute who claimed that his constitutional right to be free from cruel and unusual punishment was being violated based upon his allegations that sexually aggressive inmates were being housed with other inmates, including himself, and that he was at substantial risk of being attacked by an inmate infected with the HIV virus. Judge Elliott appointed me to represent the inmate. After a bench trial and at the urging of Judge Elliott, the State agreed to take additional precautions to protect plaintiff and others similarly situated.

7. Parker vs. McCants, et al. Supreme Court of Georgia, 258 Ga. 364, 369 S.E. 481 (1988)

My Clients: McCants et al, Petitioners

Nature of my representation: Co-lead counsel. I prepared the pleadings, conducted discovery, prepared briefs and motions, conducted bench trial, and made the oral arguments.

Date of representation: 1988

Trial Judge: W.F. Blanks

Co-counsel: Jim Butler, P.O. Box 2766, Columbus, GA.  
Telephone: 706-322-1990

Opposing Counsel: Frank Jordan, Jr.  
Superior Court of Muscogee County  
P.O. Box 1340  
Columbus, Georgia 31902  
Telephone: 706-665-8606

Disposition: Supreme Court affirmed trial court's judgment in favor of recall petitioners.

Summary: This case arose from an attempt by citizens (our clients) to recall some of their local elected representatives. The probate judge refused to validate the recall petitions and call for a recall election. We sued the probate judge, and after a bench trial, the superior court judge ordered him to validate the petitions. The probate judge appealed to the Georgia Supreme Court claiming various irregularities regarding the petitions. The Supreme Court affirmed the trial judge explaining that government accountability outweighed minor technical irregularities in the petitions.

8. Credit Bureau of Columbus Case, U.S. District Court, Middle District of Georgia,

My Client: Credit Bureau of Columbus, Defendant

Nature of my representation: Lead Counsel. I prepared the pleadings, conducted discovery, and tried the case.

Date of representation: Pre-1992.

Judge: J. Robert Elliott

Co-counsel: Richard Y. Bradley  
Bradley & Hatcher  
P.O. Box 2866  
Columbus, Georgia 31902  
Telephone: 706-660-9988

Opposing Counsel: Bill (Billy) Scrantom, III  
Mr. Scrantom no longer practices law and does not live in Columbus. If his address and telephone number are needed, I can probably obtain them.



Disposition: Defendants verdict.

Summary: Plaintiff claimed local credit bureau published false information in her credit report, thus violating the Fair Credit Reporting Act. Plaintiff sought substantial damages. Jury returned verdict in favor of Defendant. This case was tried while at my former firm, and I do not have the records, which would include the case number. If that information is needed, I will attempt to have my former firm retrieve the file from storage.

9. Richard Durga vs. Erica Feinberg, State Court of Muscogee County, Georgia

My client: Erica Feinberg (and her insurance company),  
Defendant

Nature of representation: Lead counsel in second trial. Co-counsel in first trial. I prepared the pleadings, conducted the discovery, and prepared the appellate briefs. After reversal and remand, I tried the case the second time.

Date of representation: Pre-1992. I handled this case at my former firm. Therefore, they have the file which would include the file number. If that information is needed, I will attempt to retrieve the file from my former file to obtain the information.

Judge: Robert Johnston

Opposing counsel: Jim Elkins  
836 2<sup>nd</sup> Avenue  
Columbus, Georgia 31901  
Telephone: 706-324-7115

Co-counsel: William B. Hardegree  
Hatcher, Stubbs, Land, Hollis & Rothschild  
P.O. Box 2707  
Columbus, Georgia 31902  
Telephone: 706-324-0201

Disposition: Jury verdict for plaintiff in first trial in the amount of \$100,000.00 which was reversed on appeal. Second trial after remand resulted in defendant's verdict.

Summary: This case involved a serious injury arising from a pedestrian/motor vehicle accident. In the first trial, the jury

returned a verdict in favor of the plaintiff in the amount of \$100,000.00. That verdict was reversed on appeal, and the case was remanded for a new trial. In the second trial, the jury returned a defendant's verdict.

10. William P. Head vs. Georgia Farm Bureau Mutual Insurance Company, Superior Court of Muscogee County, Georgia, Civil Action No. SU2000CV-4573

My client: Georgia Farm Bureau Insurance Company,  
Defendant

Nature of representation: Co-lead counsel. I have reviewed pleadings and motions and have conducted the oral argument on one of the motions.

Date of representation: Currently pending

Judge: Robert Johnston

Co-counsel: Ben Land  
Buchanan & Land, LLP

Opposing Counsel: Neal Pope  
P.O. Box 2128  
Columbus, Georgia 31902  
Telephone: 706-324-0050

Disposition: Pending

Summary: This litigation is a class action which seeks to hold motor vehicle insurance carriers liable for permanent diminution in value property damage claims, even if their insureds asserted no such claims and even if no evidence exists showing that the repairs were done improperly. This litigation has broad ramifications for all insurance carriers that write first party property damage coverage. Our firm is defending two other major insurance carriers in similar class actions and is aware of at least two other similar cases against other insurance companies.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Response:

As a member of the Judiciary Committee in the Georgia Senate, I was involved in significant legal activities relating to the enactment of new laws and the refinement of existing laws. Our committee reviewed most of the legislation that came through the Senate, and I played an active role in the committee. I have also sponsored significant legislation affecting the legal system, including legislation fine tuning our expert affidavit statute, legislation designed to deter ambulance chasing by unscrupulous lawyers, and legislation that would improve our court filing data collection system.

I have also served as chairman of the Georgia Indigent Defense Council which is charged with the responsibility of overseeing the funding and implementation of indigent criminal defense programs in the state.

CLAY D. LAND

## RESPONSES TO SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Response: If I am appointed to the federal bench, I do not intend to make any arrangements to receive deferred future income from outside business sources. If an arrangement is made with my law firm for any deferred future payments, any such arrangement should be completed within one year of my departure from the firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Response: I am unaware at this time of any potential conflicts of interest. I intend to comply fully with the guidelines regarding Federal Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Response: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Response: See Financial Disclosure Report attached hereto.

5. Please complete the attached financial net worth statement in detail  
(Add schedules as called for)

Response: See Financial Net Worth Statement attached hereto.

6. Have you ever held a position or played a role in a political campaign?  
If so, please identify the particulars of the campaign, including the  
candidate, dates of the campaign, your title and responsibilities.

Response: I was a candidate for the Georgia State Senate, District 16,  
in 1994 and for Columbus City Council in 1992.

I also served as chairman for the Muscogee County George Bush for  
President campaign in 2000.

AO-10 (w)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Land, Clay D.	<b>2. Court or Organization</b> Georgia-Middle District	<b>3. Date of Report</b> 09/22/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)	<b>5. Report Type (check type)</b> X Nomination, Date 09/21/2001 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/2000 to 09/21/2001
<b>7. Chambers or Office Address</b> P.O. Box 2848 Columbus, Georgia 31902	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.		

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Buchanan & Land, LLP
2 Director	Land, Inc.
3 Director	Lanboys, Inc.

Continued on next page

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouses)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	Buchanan & Land, LLP	\$261,000.00
2 1999	Georgia General Assembly	\$9,300.00
3 1999	Columbus Bank & Trust Company	\$5,600.00
4 2000	Buchanan & Land, LLP	\$110,000.00

Continued on next page

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Land, Clay D.	09/22/2001

**SECTION HEADING.** (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Advisory Board	Columbus Bank & Trust Company
5	Director	Springer Opera House, Inc.
6	Director	Twin Cedars Youth Services, Inc.
7	Trustee	Trust 1

## PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000	Georgia General Assembly	\$8,700.00
6	2000	Columbus Bank & Trust Company	5,600.00
7	2001-Sep	Buchanan & Land, LLP (Income through 9/21/2001)	\$164,000.00
8	2001-Sep	Columbus Bank & Trust Company (through 9/21/2001)	\$4,200.00
9	2000	Buchanan & Land, LLP (Spouse)	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Land, Clay D.	09/22/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of instructions.)*

	SOURCE <b>NONE</b> (No such reportable reimbursements.)	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of instructions.)*

	SOURCE <b>NONE</b> (No such reportable gifts.)	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of instructions.)*

	CREDITOR <input checked="" type="checkbox"/> <b>NONE</b> (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1			
2			
3			
4			
5			
6			

\* VAL. CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more



<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Land, Clay D.	09/22/2001

**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
1 CB&T Bank(cash equivalents)	E	Interest	N	T					
2 Salomon Smith Barney(mm) (money market)	E	Dividend	M	T					
3 Synovus Securities(mm) (money market)	B	Dividend	K	T					
4 AFLAC Common Stock	B	Dividend	M	T					
5 AOL Common Stock	A	Dividend	J	T					
6 Citigroup Common Stock	A	Dividend	X	T					
7 Compaq Common Stock	A	Dividend	J	T					
8 CISCO Common Stock		None	J	T					
9 Cousins Prop. Common Stock	A	Dividend	J	T					
10 Delta Air Common Stock	A	Dividend	J	T					
11 Disney Common Stock	A	Dividend	J	T					
12 Delphi Automotive Common Stock	A	Dividend	J	T					
13 EDS Common Stock	A	Dividend	K	T					
14 Ford Common Stock	C	Dividend	K	T					
15 Gillette Common Stock	A	Dividend	J	T					
16 General Motors Common Stk.	A	Dividend	J	T					
17 Home Depot Common Stock	A	Dividend	L	T					
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2 Val Codes:</b> J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3 Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b> Name of Person Reporting Land, Clay D.	Date of Report 09/22/2001	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>
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**VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period	D. Transactions during reporting period
Place "00" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P) (2) Value Method Code (Q-W)
			If not exempt from disclosure (2) Date: Month-Day (3) Value Code (J-P) (4) Chain Code (A-H) (5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)			
18 Intel Common Stock	A	Dividend	K T
19 Japanese Equity Fund Stk.		None	J T
20 Coca-Cola Common Stock	B	Dividend	K T
21 Lucent Common Stock	A	Dividend	J T
22 Mirant Common Stock	A	Dividend	L T
23 Munder Net Fund		None	J T
24 Microsoft Common Stock	A	Dividend	K T
25 Pfizer Common Stock	A	Dividend	K T
26 Rock Tenn Common Stock	A	Dividend	J T
27 Synovus Fin. Common Stock	C	Dividend	N T
28 Suntrust Bank Common Stock	B	Dividend	L T
29 Southern Co. Common Stock	D	Dividend	M T
30 AT&T Common Stock	A	Dividend	J T
31 TSYS Common Stock	A	Dividend	L T
32 UPS Common Stock	A	Dividend	J T
33 Visteon Common Stock	A	Dividend	J T
34 World Com Common Stock	A	Dividend	J T

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Land, Clay D.		Date of Report 09/22/2001	
<b>VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
35 Walmart Common Stock	A	Dividend	L	T	
36 Lanboys, Inc.	E	Dividend	K	T	
37 Land, Inc.	A	Dividend	J	T	
38 Rental Property, Columbus, GA	C	Rent	H	T	
39 Trust-CBSI(cash equiv)	C	Interest	N	T	
40 Trust-Salomon(cash equiv)	B	Dividend	L	T	
41 Trust-AFLAC Common Stock	A	Dividend	K	T	
42 Trust-Bellsouth Common Stk.	B	Dividend	K	T	
43 Trust-Citigroup Common Stk.	A	Dividend	J	T	
44 Trust-Coca Cola Common Stk.	A	Dividend	K	T	
45 Trust-Cousins Prop. Common	A	Dividend	J	T	
46 Trust-Delta Air Common Stk.	A	Dividend	J	T	
47 Trust-Exxon-Mobil Common	A	Dividend	J	T	
48 Trust-First Union Common	A	Dividend	K	T	
49 Trust-Ford Common Stock	B	Dividend	J	T	
50 Trust-Home Depot Common	A	Dividend	K	T	
51					
<b>1</b> In/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000					
<b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more					
<b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market					

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Land, Clay D.	09/22/2001

*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "DO" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)									
52 Trust-Mid America Rpt. Comm.	A	Dividend	J	T					
53 Trust-Mirant Common Stock	A	Dividend	J	T					
54 Trust-Pfizer Common Stock	A	Dividend	K	T					
55 Trust-RJR Common Stock	A	Dividend	J	T					
56 Trust-Southern Co. Common	B	Dividend	K	T					
57 Trust-Suntrust Common Stock	A	Dividend	K	T					
58 Trust-Synovus Common Stock	B	Dividend	K	T					
59 Trust-Visteon Common Stock	A	Interest	J	T					
60 Trust-World Com Common	A	Dividend	J	T					
61 Trust-Southern Preferred	B	Dividend	K	T					
62 Trust-Munic. Bond (Col. Reg)	B	Interest	K	T					
63									
64									
65									
66									
67									
68									

1 Incl Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Land, Clay D.	09/22/2001

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.***(Indicate part of report.)*

1. Clay Land is the trustee for the trust listed in the investments/trust section.
2. Since my retirement accounts are self directed IRA's, I did not list them in aggregate in the investments/trust section; but instead, the individual assets contained in the IRA's (cash equivalents and stocks) are included in the individual listings of cash equivalents and stocks in the investments/trust section.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Land, Clay D.	09/22/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Clay D. Land Date 9/22/2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

CLAY D. LAND  
FINANCIAL STATEMENT

NET WORTH  
(9/21/2001)

ASSETS		LIABILITIES	
Cash	\$ 425,000.00	Real Estate Mortgage (Sch.C)	\$25,000.00
Listed Securities (Sch. A)	941,000.00	Accounts/Bills due	10,000.00
Real Estate (Sch. B)	475,000.00		
Autos/Personal Property	60,000.00		
Retirement Accounts	360,000.00		
		<b>Total Liabilities</b>	<b>\$35,000.00</b>
		<b>Net Worth</b>	<b>\$2,226,000.00</b>
<b>Total Assets</b>	<b>\$2,261,000.00</b>	Total Liabilities & net worth \$2,261,000.00	

General Information:

No assets are pledged except real estate mortgage is secured by home.

I have never filed for bankruptcy.

I am named as a defendant in a lawsuit filed against my law firm by a pro se litigant who was our opponent in litigation that he filed against one of our clients. I was not involved in the underlying litigation that gave rise to the lawsuit, and no specific allegations have been made against me. We believe the lawsuit to be frivolous.

This financial statement includes assets and liabilities of my spouse and minor children.

Contingent Liabilities:

I have no contingent liabilities of which I am aware.

CLAY D. LAND

FINANCIAL STATEMENT  
(9/21/2001)SCHEDULE A  
LISTED SECURITIES

NAME OF SECURITY	NUMBER OF SHARES
AFLAC	9,500
AMERICA ONLINE	200
CITIGROUP	463
COMPAQ	600
CISCO	200
COUSINS PROPERTIES	500
DELTA AIRLINES	400
DISNEY	700
DELPHI AUTOMOTIVE	139
EDS	100
FORD MOTOR CO.	2,315
GILLETTE	200
GENERAL MOTORS	200
HOME DEPOT	2,000
INTEL	1,200
JAPANESE EQUITY FUND	500
COCA COLA	1,000
LUCENT	400
MIRANT	2,322
MUNDER NET FUNDS	441
MICROSOFT	400
PFIZER	600
ROCK TENN	500
SYNOVUS	11,990
SUNTRUST	825
SOUTHERN COMPANY	5,844
AT&T	800
TOTAL SYSTEM SERVICES	4,800
UNITED PARCEL SERVICE	100
VISTEON CORP.	171
WORLD COM	676
WALMART	1,300

This schedule includes stocks owned in retirement accounts.



CLAY D. LAND  
FINANCIAL STATEMENT  
(9/21/2001)  
SCHEDULE B  
REAL ESTATE

PARCEL 1

COLUMBUS, GEORGIA

HOME PLUS 15 ACRES

ESTIMATED FAIR MARKET VALUE: \$350,000.00

PARCEL 2

COLUMBUS, GEORGIA

RESIDENTIAL RENTAL PROPERTY

ESTIMATED FAIR MARKET VALUE: \$125,000.00

634

CLAY D. LAND

FINANCIAL STATEMENT  
(9/21/2001)

SCHEDULE C

REAL ESTATE MORTGAGE

MORTGAGEE: CHASE MANHATTAN MORTGAGE CORPORATION

OUTSTANDING BALANCE AS OF 9/21/01: \$25,000.00

SECURED BY HOME, COLUMBUS, GEORGIA

CLAY D. LAND

## RESPONSES TO SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Response: During my professional career, I have devoted substantial time to efforts designed to help the disadvantaged. These efforts have included pro bono legal activities, public service through elected office, active involvement in organizations that serve the needs of the disadvantaged, and active participation in, and support of, my local church.

Pro Bono Legal Activities

I played a leadership role in establishing the "Columbus Pro Bono Project" which connected volunteer lawyers with pro bono clients through the Columbus Legal Services office. I served as co-chairman of the local pro bono project committee and have represented pro bono clients through this program. These efforts were recognized by the State Bar of Georgia when they awarded me the H. Sol Clark Pro Bono Award.

I have also played a leadership role in efforts to ensure that indigents accused of a crime receive their constitutional right to an adequate defense, having served as chairman of the Georgia Indigent Defense Council. The Georgia Indigent Defense Council has had the responsibility of receiving state funds and allocating those funds to counties for indigent defense programs. The Council has also been responsible for developing and implementing guidelines for the adequate defense of indigent defendants accused of crimes.

Serving the Disadvantaged through Elected Public Service

From 1993 through 2000, I devoted substantial time to public service as an elected official. Much of that time was spent on issues designed to help the disadvantaged help themselves.

Response to Question 1 continued:

As an at large member of the Columbus City Council, I represented the entire City. My constituency included many disadvantaged residents. During my two years on Council, I spent substantial time supporting the efforts of those who tried to help the disadvantaged. Two examples come to mind. I was a strong advocate for anti-drug programs designed to run drug dealers out of poor neighborhoods. My involvement in these neighborhood anti-drug programs included advocacy for the programs as a member of City Council and also active participation in the anti-drug marches that occurred in the neighborhoods. I also led the effort to provide transportation for disadvantaged children to attend Saturday tutorial programs.

As a member of the State Senate, I spent substantial time on issues affecting the disadvantaged, including foster care reform, education reform specifically focused on helping low income children, and advocacy for senior adults (which resulted in my being honored with the Georgia Council on Aging's Outstanding Legislator Award).

Twin Cedars Youth Services, Inc.

For the last few years, I have served on the board of Twin Cedars Youth Services, Inc., a residential treatment facility for abused children. I have also served as chairman of the policy committee. During my service on the board, I have devoted time and resources toward helping these abused children recover from horrible circumstances over which they had no control in hopes of allowing them to realize their innate potential.

First Baptist Church of Columbus

I have devoted substantial time and resources to my local church, which has as part of its mission helping the disadvantaged. My service has included serving as a deacon, chairman of the stewardship committee, chairman of the strategic planning committee, and as a Sunday School teacher.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged, to any organization which discriminates—through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, what you have done to try to change these policies?

Response to Question 2: No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Response: I am unaware of any "selection commission." My experience during this process has included to date an interview with a group of representatives from the offices of the Republican Georgia Congressmen and the Bush campaign, an interview with representatives from the White House Counsel's Office, an interview with a representative from the Justice Department, an FBI background investigation, and an interview with representatives for Senator Max Cleland, Georgia's senior Senator.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

Response: No.

5. Please discuss your views on the following criticism involving "judicial activism."

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Response to Question 5: Judges should interpret the law based upon their discernment of the drafters' intent. Judges should follow the law based upon the principle of stare decisis, even if the outcome conflicts with their personal views. Judges should not legislate from the bench but should exercise restraint with an understanding of the proper role of the judicial branch of government and a genuine respect for the constitutional role assigned to the other two branches of government. Judges should appreciate the limitations on their jurisdiction to decide cases and controversies that are ripe for judicial determination.

AFFIDAVIT

I, Clay D. Land, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/24/2001  
DATE

Clay D. Land  
CLAY D. LAND

Karen M. Meeley  
NOTARY

Justice Martone?

**STATEMENT OF FREDERICK J. MARTONE, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA**

Judge MARTONE. Madam Chairperson, my wife, Jane, and my children, Jonathan and Anne, are not here today, but I know they are very supportive of me and thinking of me at this time. Thank you.

[The biographical information of Judge Martone follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Frederick James Martone
  
2. Address: List current place of residence and office address(es).  
  
Office:  
Supreme Court of Arizona  
1501 W. Washington  
Phoenix, AZ 85007-3327  
  
Residence:  
Phoenix, AZ
  
3. Date and place of birth.  
November 8, 1943. Fall River, MA
  
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married. Jane Laurie Martone. Maiden name: Parsons.  
Medical social worker, Mesa Lutheran Hospital, 525 W. Brown Rd., Mesa, AZ 85201
  
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Harvard Law School, 1974-1975, LL.M., 1975  
University of Notre Dame, 1969-1972, J.D., 1972  
College of the Holy Cross, 1961-1965, B.S., 1965
  
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1992 to present: Justice of the Supreme Court of Arizona  
 1985-1992: Judge of the Superior Court of Arizona  
           in Maricopa County  
 1973-1985: Associate and then partner at the law firm  
           of Jennings, Strouss and Salmon, Phoenix, AZ  
 1974-1975: While on leave from Jennings, Strouss & Salmon,  
           Staff Attorney at the Supreme Judicial Court of  
           Massachusetts, Boston, MA  
 1972-1973: Law clerk to the Honorable Edward F. Hennessey,  
           Justice of the Supreme Judicial Court of Massachusetts,  
           Boston, MA  
 Summer 1971: Summer clerk at the Notre Dame Law School,  
           Notre Dame, IN., on juvenile justice  
 Summer 1970: Corporate and community relations, United  
           Community Services, South Bend, IN  
 1965-1969: Officer, United States Air Force.  
 Summer 1965: Clerk at Seaboard Construction Company,  
           Chelsea, MA

7. Military Service: Have you had any military service? If so,  
 give particulars, including the dates, branch of service, rank  
 or rate, serial number and type of discharge received.

Yes. Captain, United States Air Force, FV3173253, 1965-1969.  
 Honorable.

8. Honors and Awards: List any scholarships, fellowships,  
 honorary degrees, and honorary society memberships that you  
 believe would be of interest to the Committee.

Markham Memorial Medal and Prize in Philosophy at Holy Cross  
 College, 1965  
 Faculty Prize for Academic Achievement & Leadership, Notre  
 Dame Law School, 1971  
 Member, Notre Dame Law Review, 1970-1972  
 Honorary Member of Phi Delta Phi, Legal Fraternity, 1999

9. Bar Associations: List all bar associations, legal or  
 judicial-related committees or conferences of which you are or  
 have been a member and give the titles and dates of any  
 offices which you have held in such groups.

American Bar Association  
 Litigation Section of the American Bar Association  
 Judicial Division of the American Bar Association  
 American Judicature Society



State Bar of Arizona  
 Arizona Judges Association  
 Maricopa County Bar Association  
 Master of the Horace Rumpole Inn of Court  
 Chair, Maricopa County Commission on Trial Court  
 Appointments, 1996  
 Member, State Bar Civil Practice and Procedure Committee  
 Member, State Bar Committee on Professionalism  
 Member, Maricopa County Bar Association Committee on  
 Professionalism  
 Member, Maricopa County Bar Association Nominating  
 Committee  
 Chair, Arizona Bar Foundation 1990 Summer Institute  
 Member, Discovery Committee of the National Center for  
 State Courts  
 Member, Maricopa County Bar Association Leadership  
 Development Committee  
 Member, Maricopa County Bar Association Law/Media  
 Steering Committee  
 Co-chair, Arizona State-Federal Judicial Council, 1992-present  
 Chair, 1989 Arizona Judicial Conference  
 Chair, Superior Court Civil Study Committee, 1987-89  
 Chair, Superior Court Commissioner Nominating Committee,  
 1989-90  
 Chair, Superior Court Pro Tem Committee, 1989-90  
 Member, Superior Court Executive Committee  
 Member, Task Force on Productivity, Arizona Commission  
 on the Courts  
 Member, Organizational Committee of the Arizona Judicial  
 College  
 Member of the Arizona Judicial Council Rules Committee

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

A. No lobbying organizations.

B. Other organizations:

Member of the Arizona Town Hall (1978 to the present)  
 Member of the Arizona Town Hall Training Committee  
 (for about the past 10 years)  
 Phoenix Suns Athletic Club (1994-to the present)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

<u>Bar Admission</u>	<u>Date</u>
Supreme Judicial Court of Massachusetts	December 15, 1972
United States District Court for the District of Massachusetts	March 26, 1973
Arizona Supreme Court	April 27, 1974
United States District Court for the District of Arizona	May 13, 1974
United States Court of Appeals for the Ninth Circuit	April 20, 1976
United States Supreme Court	July 18, 1977

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Copies of the following articles are attached:

Frederick J. Martone, Book Review, Judge's Journal, Summer 1998, at 43  
 Frederick J. Martone, Book Review, 32 Ariz. Atty. No. 6, at 49 (1996)  
 Frederick J. Martone, Book Review, 30 Ariz. Atty. No. 10, at 49 (1994)  
 Frederick J. Martone, Book Review, 27 Ariz. Atty. No. 2, at 13 (1990)  
 Frederick J. Martone, Adversary Adjudication on Trial, 21 Ariz. St. L. J. 227 (1989)  
 Frederick J. Martone, Of Power and Purpose, 54 Notre Dame L. Rev. 829 (1979)  
 Frederick J. Martone, American Indian Tribal Self-Government in the Federal System, 51 Notre Dame L. Rev. 600 (1976)  
 Co-author of Constitutional Rights of the Accused, 60 Mass. L. Q. 19 (1975)  
 Comment, 46 Notre Dame L. Rev. 610 (1971)

Copies of the following speeches are attached:

Living with a Delay Reduction Program, National Center  
for State Courts, 1987  
State Civil Jurisdiction In Indian Country, Conference of  
Chief Justices, 1987  
Historical and Legal Underpinnings of Indian Law, Annual  
Judicial Conference, 1987  
Maricopa County Bar Association Motions Program, 1988  
Code of Judicial Conduct, Superior Court of Arizona,  
1989  
Comments at my swearing-in as a Justice of the Supreme  
Court of Arizona, 1992  
Parallel Judiciaries: A Functional Approach to State-  
Federal Jurisdiction, to a Bill of Rights Symposium  
at the BYU Law School, 1995  
Address to the Goldwater Institute on Federal  
Jurisdiction, 1995  
Address on Petitions for Review, Arizona State Bar  
Convention, 1996

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. July 11, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

February 28, 1992 to Present

Justice of the Supreme Court of Arizona.

I was appointed by the Governor under Arizona's merit selection process. The Supreme Court is the court of last resort of the state. Our review of the decisions of the Arizona Court of Appeals, an intermediate appellate court, is discretionary. We have direct appellate review of any case in the superior court in which the death penalty has been imposed. We also have original jurisdiction over certain matters. Under the Arizona Constitution, we develop, adopt, amend, and repeal rules of court. We supervise the discipline of lawyers and judges in the state. Finally, we exercise general supervisory power over all the state courts.

March 18, 1985 to February 28, 1992

Judge, Superior Court of Arizona in Maricopa County.

I was appointed by the Governor under our merit selection process. The Superior Court of Arizona is the trial court of general jurisdiction. I had assignments in the civil department and the criminal department. I served as the presiding civil judge and also as the associate chief presiding judge of the court. I also had a special assignment to try complex civil and criminal cases.

15. Citations: If you are or have been a judge, provide:

- (1) citations for the ten most significant opinions you have written;
1. Roosevelt Elem. School Dist. v. Bishop, 179 Ariz. 233, 877 P.2d 806 (1994).
2. Samaritan Foundation v. Goodfarb, 176 Ariz. 497, 862 P.2d 870 (1993).
3. Salgado v. Kirschner, 179 Ariz. 301, 878 P.2d 659 (1994).
4. Estate of Gillespie, 183 Ariz. 282, 903 P.2d 590 (1995).
5. State v. Lara, 183 Ariz. 233, 902 P.2d 1337 (1995).
6. State v. Tober, 173 Ariz. 211, 841 P.2d 206 (1992).
7. Augustine v. Peoria, 188 Ariz. 368, 936 P.2d 554 (1997).
8. Southern Pacific Transp. Co. v. Yarnell, 181 Ariz. 316, 890 P.2d 611 (1995).

9. Knoell v. Cerkenik-Anderson Travel, Inc., 185 Ariz. 546, 917 P.2d 689 (1996).
10. Moreno v. Gonzalez, 192 Ariz. 131, 962 P.2d 205 (1998).

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and

During the period of time I have been a Justice of the Supreme Court of Arizona (1992 to present), no opinion of mine has been reversed by the Supreme Court of the United States. The following list contains citations to opinions or memorandum decisions affecting rulings I made as a Judge of the Superior Court of Arizona in Maricopa County (1985-1992).

1. Philips v. Clancy, 152 Ariz. 415, 733 P.2d 300 (App. 1986).

The summary judgment I granted in favor of the defendant in a legal malpractice case was reversed. The court of appeals held that it was error to give any consideration to the affidavit of the judge in the underlying action.

2. Michael E. St. George v. Heck, 1 CA-CIV 8772 (Jan. 20, 1997).

I granted summary judgment based on the basis of res judicata. Believing that an action on an open account and a note for the same legal services were separate causes of action, the court of appeals reversed.

3. Tamara Ann Perry v. Joyce Perry, 2 CA-CV 87-0035 (Feb. 19, 1987).

I granted summary judgment on the basis on res judicata. The court of appeals reversed believing that the prior judgment was invalid because the Colorado court was without jurisdiction.

4. Billy F. Jones v. Bill R. Swafford, 1 CA-CIV 8881 (Sep. 15, 1987).

The court of appeals reversed a jury verdict on a defamation and punitive damages claim holding that the statements were not slanderous per se. Other decisions in the case were affirmed.

5. Wells v. America West Airlines, 2 CA-CV 87-0152 (Sep. 29, 1987).

I granted judgment notwithstanding the verdict on the issue of punitive damages. The court of appeals vacated that order but affirmed the order granting a new trial.

6. Walling Enterprises v. Marshall, 2 CA-CV 87-0162 (Sep. 30, 1987).

My grant of summary judgment was reversed. The court of appeals believed there was a disputed issue of material fact.

7. Continental Casualty Company v. National Surety Corporation, 1 CA-CIV 9258 (Oct. 15, 1987).

On stipulated facts, I ruled that one insurer was not entitled to contribution from another insurer. The court of appeals disagreed and reversed.

8. C.S. McCrossan, Inc. v. State of Arizona, 2 CA-CV 88-0021 (Mar. 10, 1988).

In this action by a contractor against the state, the court of appeals affirmed, but on the cross-appeal by the contractor concluded that the contractor's claim was liquidated and thus it was entitled to pre-judgment interest.

9. John Aberle v. Thomas M. Shaw, 1 CA-CIV 9504 (Oct. 25, 1988)

In this jury case the court of appeals affirmed the ruling that will beneficiaries have a cause of action against the testator's lawyer for malpractice, but reversed the judgment in favor of the will beneficiaries concluding that the evidence was insufficient.

10. State of Arizona v. Tolleson, 160 Ariz. 385, 773 P.2d 490 (App. 1989).

I issued an injunction against deceptive and fraudulent sales techniques and the selling of a motivational course. The court of appeals reversed, concluding that the injunction was overly broad under the First Amendment.

11. Dunn v. Superior Court, 160 Ariz. 311, 772 P.2d 1164 (App. 1989).

In my capacity as civil presiding judge, I held that a notice of change of judge was untimely. The court of appeals vacated that order and held that only the noticed judge can make that ruling.

12. State v. Grunwald, 1 CA-CR 89-584 (Mar. 6, 1990).

Among other things, I imposed a fine pursuant to a plea agreement. The court of appeals reversed concluding that the fine was not mandatory.

13. James Gary Rickard v. Bornhauser, Inc., 1 CA-CV 88-466 (Feb. 1, 1990)

I granted a defense motion for summary judgment in a tort case and the court of appeals reversed concluding that a defendant had a duty to the plaintiff as one who supplies a chattel for another's use.

14. State v. Wasson, 1 CA-CV 89-026 (Jun. 5, 1990).

I granted the state's motion for summary judgment in a consumer fraud action. The court of appeals reversed, concluding that there were material issues of fact.

15. State v. King, 166 Ariz. 342, 802 P.2d 1041 (App. 1990).

The defendant was convicted of robbery and I imposed a six year sentence consecutive to any sentence that would be imposed in a proceeding to revoke his probation. The court of appeals affirmed the conviction but remanded for resentencing, and held that one could not run a sentence consecutively to a sentence that may be imposed in the future.

16. I. Jerome Hirsch v. Trans-Arizona Associates, Inc., 1 CA-CV 88-407 (Jun. 7, 1990).

In this contract dispute to remodel a home, I took judicial notice of the fact that contractors charge rent for equipment. The court of appeals reversed concluding that the facts were subject to reasonable dispute.

17. State v. Klemencic, 170 Ariz. 474, 826 P.2d 337 (App. 1991).

In reviewing a lower court appeal from the city court, I affirmed the city court's suppression of blood alcohol test results. The court of appeals reversed, concluding that the offer of proof in the city court was sufficient.

18. Jachimek v. Superior Court, 169 Ariz. 317, 819 P.2d 487 (App. 1991).

I upheld the validity of a Phoenix City ordinance that required pawn shops in an inebriate district to obtain a use permit. The supreme court reversed, holding the city ordinance invalid under the enabling legislation.

19. Linda Knapp v. Martone, 170 Ariz. 237, 823 P.2d 685 (1992).

As a trial judge, I held that a person identified by the state as an accessory to the crime of murder was an accused person and therefore she could not properly claim to be a victim. The supreme court reversed, concluding that unless the accomplice is named in the indictment, the accomplice is not an accused person within the meaning of the Victim's Bill of Rights.

20. Rufus B. Lane v. Roadrunner Drywall Corporation, 1 CA-CV 91-102 (Jun. 30, 1992).

I granted summary judgment in favor of a contractor and the court of appeals reversed concluding that it was possible for the trier of fact to draw an inference that the contractor's employee was responsible for removing a brace that caused the scaffolding to fall and injure the plaintiff.



21. Perez v. Peter Piper Pizza, 1 CA-CV 91-171 (Mar. 2, 1993).

I granted summary judgment in favor of a pizza parlor and the designer of a walkway. The court of appeals affirmed as to the pizza parlor, but reversed as to the designer of the walkway.

22. Transamerica Commercial Finance Corp. v. State of Arizona, 1 CA-CV 91-0550 (Dec. 6, 1994).

I construed a reinsurance agreement to transfer assets equal to assumed liabilities. The court of appeals reversed in part concluding that the agreement was ambiguous.

23. State v. Schrader, 173 Ariz. 582, 845 P.2d 508 (App. 1993).

In a lower court appeal from an action tried in the Phoenix Municipal Court, I concluded that the defendant was not in actual physical control of his vehicle because he was sleeping in his car in a parking lot. The court of appeals reversed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

1. State v. Youngblood, 173 Ariz. 502, 844 P.2d 1152 (1993).
2. Hazine v. Montgomery Elevator Co., 176 Ariz. 340, 346, 861 P.2d 625, 631 (1993) (Martone, J., dissenting).
3. State v. Evans, 177 Ariz. 201, 204, 866 P.2d 869, 872 (1994) (Martone, J., dissenting).  
See Arizona v. Evans, 514 U.S. 1, 115 S. Ct. 1185 (1995).
4. Roosevelt v. Bishop, 179 Ariz. 233, 877 P.2d 806 (1994).

5. Jett v. City of Tucson, 180 Ariz. 115, 124, 882 P.2d 426, 435 (1994) (Martone, J., dissenting).
6. State v. DeWitt, 184 Ariz. 464, 471, 910 P.2d 9, 16 (1996) (Martone, J., dissenting).
7. State v. Miller, 186 Ariz. 314, 921 P.2d 1151 (1996).
8. State v. Korzuch, 186 Ariz. 190, 196, 920 P.2d 312, 318 (1996) (Martone, J., dissenting).
9. State v. DePiano, 187 Ariz. 27, 926 P.2d 494 (1996).
10. State v. Rogers, 186 Ariz. 508, 513, 924 P.2d 1027, 1032 (1996) (Martone, J., dissenting).
11. Citizens Clean Elections Com'n v. Myers, 196 Ariz. 516, 1 P.3d 706 (2000).

If any of the opinions listed were not officially reported, please provide copies of the opinions.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Yes. Law clerk to the Honorable Edward F. Hennessey, Supreme Judicial Court of Massachusetts, 1972-1973.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Associate with Jennings, Strouss and Salmon, Two North Central, Phoenix, Arizona 85004, 1973-1974

Graduate student at the Harvard Law School, Cambridge, Massachusetts and Staff Attorney at the Supreme Judicial Court of Massachusetts, 1974-1975 (while on leave from Jennings, Strouss and Salmon)

Associate with Jennings, Strouss and Salmon, Two North Central, Phoenix, Arizona 85004, 1975-1977

Partner at Jennings, Strouss & Salmon, Two North Central, Phoenix, Arizona 85004, 1978-1985

Judge of the Superior Court of Arizona in Maricopa County, 201 West Jefferson, Phoenix, Arizona, 85003, 1985-1987

Presiding Judge, Civil Department, Superior Court of Arizona in Maricopa County, Phoenix, Arizona, 85003, 1987-1988

Associate Chief Presiding Judge, Superior Court of Arizona in Maricopa County, Phoenix, Arizona, 85003, 1988-1990

Judge of the Superior Court of Arizona in Maricopa County, Special Assignment, 1990-1992

Justice of the Supreme Court of Arizona, 1501 W. Washington, Phoenix, Arizona 85007, 1992 to present.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Federal Indian law and litigation, federal water law, commercial litigation, appellate litigation, civil rights and Title VII litigation, and copyright and trademark litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The Salt River Project, The City of Yuma, The Town of Parker, Commercial Union Insurance Company, the Interior and Insular Affairs Committee of the United States House of Representatives, the American Indian Policy Review Commission, and St. Joseph's Hospital. I specialized in federal Indian law and federal water law, civil rights and Title VII litigation, commercial litigation, and copyright and trademark litigation.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly.

2. What percentage of these appearances was in:

- (a) Federal courts: 80%
- (b) state courts of record: 20%
- (c) other courts.

3. What percentage of your litigation was:

- (a) civil 100%.
- (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Six, five of which I was sole counsel.

5. What percentage of these trials was:

- (a) Jury. 33 1/3%
- (b) Non-jury. 66 2/3%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Colorado River Indian Tribes v. Town of Parker,  
No. CIV 83-2359 PHX WPC.

I represented the Town of Parker in a case of special significance to the State of Arizona. In an action before the Honorable William P. Copple, in the United States District Court for the District of Arizona, No. CIV 83-2359 PHX WPC, the Colorado River Indian Tribe and the Town of Parker disputed each other's jurisdiction within the Town. The Tribe contended that the Town was still part of its reservation. The Town disputed this. Judge Copple granted my motion for preliminary injunction against the Tribe in April of 1984, restraining the Tribe from enforcing its liquor ordinance within the Town of Parker, and on roads and highways across the reservation to the Town. I argued the case in the United States Court of Appeals for the Ninth Circuit, which reversed. Colorado River Indian Tribes v. Town of Parker, 776 F.2d 846 (9th Cir. 1985). Counsel for the Tribe was Alleta d'A Belin, San Francisco, California.

- (2) Salt River Project v. Navajo Tribe of Indians,  
No. CIV 78-352 PHX WPC.

I represented the Salt River Project, Arizona Public Service Company, Tucson Electric Power Company, Nevada Power Company, and the City of Los Angeles, in this action against the Navajo Tribe of Indians seeking a declaration that the Tribe was powerless to tax our clients in connection with their \$600 million power plant on the Navajo Indian Reservation. The Honorable William P. Copple, United States District Court for the District of Arizona, entered summary judgment in favor of the Tribe in 1978. I perfected an appeal to the United States Court of Appeals for the Ninth Circuit in 1980, and argued the case before a panel consisting of Judges Peck, Goodwin, and Canby. After argument, the tribe mooted our appeal by reaffirming its lease covenants not to tax our clients. Counsel for the Navajo Tribe was George Vlassis, Vlassis & Vlassis, 1545 W. Thomas, Phoenix, AZ 85015. Phone: (602)248-8811. Co-counsel were U.S. Senator Jon Kyl, 724 Hart Senate Office Building, Washington, DC 20510. Phone: (202)224-4521 and (602)840-1891. Formerly with Jennings, Strouss & Salmon. John B. Weldon, Jr., Salmon, Lewis & Weldon, 4444 N. 23rd St, Suite 200, Phoenix, AZ 85018-3956. Phone: (602)801-9063. Formerly with Jennings, Strouss & Salmon.

- (3) Amfac Mortgage Corporation v. Arizona Mall of Tempe, Inc., No. CIV 75-485 PHX WEC.

I represented Commercial Union Insurance Company in this action in the United States District Court brought by a mortgage lender against a surety on its performance bond involving the failure of a regional shopping mall. The Honorable Walter E. Craig granted our motion to dismiss the complaint for failure to state claims under the federal securities laws and under then existing Arizona law of bad faith. The mortgage lender appealed and I argued the case in the United States Court of Appeals for the Ninth Circuit before Judges Wallace, Anderson and Williams. We prevailed. The case is reported as Amfac Mtg. Corp. v. Arizona Mall of Tempe, 583 F.2d 426 (9th Cir. 1978). This was a seminal case on whether a surety has a duty of good faith towards obligees on its bond. Opposing counsel was William S. Hawgood, Stréich, Lang, Weeks & Cardon, Two North Central, Phoenix, AZ 85004-2391. Phone: (602)229-5214

After the complaint was amended to comply with the Ninth Circuit's ruling, and after approximately eight years of protracted multi-party, multi-claim litigation, the case was

settled for in excess of \$2 million. This was a typically huge piece of commercial litigation with hundreds of witnesses, thousands of exhibits, and hundreds of depositions. The motion practice and discovery were substantial. Opposing counsel on remand was William Lee McLane, 2201 N. Central Ave., Phoenix, AZ 85004. Phone: (602)257-9573. Co-counsel was William F. Haug, Jennings, Kepner & Haug, 2800 N. Central, Suite 1800, Phoenix, AZ 85004-1049. Phone: (602)234-7806.

- (4) Brooks v. City of Yuma, CIV 81-944 PHX CLH.

In this 1982 non-jury trial in the United States District Court I defended the City of Yuma against charges of employment discrimination. After three days of trial, the Honorable Charles L. Hardy found in favor of my client. Through cross-examination, I was able to keep the findings and conclusions of the Arizona Civil Rights Division from being admitted into evidence. Such findings are generally admissible but my impeachment of the key witness resulted in a rare finding of unreliability. The opposing counsel was Ms. Barbara Brown, P.O. Box 9596, Phoenix, AZ 85068-9596. Phone: (602)607-6713.

- (5) Hancock v. Walters and Strout Realty, No. 30146 in the Pinal County Superior Court.

In this 1979 jury trial, I defended Strout Realty, Inc., and the Walters against claims of breach of contract and fraud before the Honorable James E. Don. After five days of trial, the jury returned verdicts in favor of my clients on plaintiffs' complaint and on my clients' counterclaim against the plaintiffs. Opposing counsel was Robert F. Hughes, 4854 N. 79th Dr., Phoenix, AZ 85003-1010. Phone: (602)848-3504.

- (6) Rudy Baker v. City of Yuma, CIV 76-964 PHX WEC

I represented the City of Yuma in this Title VII action. The plaintiff alleged discrimination under 42 U.S.C. § 2000e, and claimed that his discharge was retaliatory. I tried the case before the Honorable Walter E. Craig in the United States District Court in December of 1980. The trial court found in favor of my client. Counsel for the plaintiff was Stanley Lubin, 2702 N. Third Street, Suite 3020, Phoenix, AZ 85004. Phone: (602)234-0008.

- (7) American Standard, Inc. v. American Standard Gas and Oil Leasing Service, Inc., CIV 76-272 PHX CAM

I represented American Standard, Inc., in this trademark infringement and unfair competition action in the United States District Court before the Honorable Carl A. Muecke. The defendant was using the words "American Standard" and a logo very similar to American Standard's. After a full blown evidentiary hearing, the trial court granted my application for preliminary injunctive relief in August of 1976. The injunction was made final in 1977. Counsel for the defendant American Standard Gas and Oil Leasing Service, Inc., was Gregory Nelson of Drummand, Nelson and Ptak, 2623 N. 7th St., Phoenix, AZ 85006. Phone: (602)263-8782.

- (8) Gerald Morrell v. City of Tempe, CIV 78-647 PHX EHC

I represented the City of Tempe in this Title VII action brought in the United States District Court by a fire fighter, alleging national origin discrimination and retaliatory discharge. After motion practice and discovery reduced the value of plaintiff's claim, we settled the case on the eve of trial for a modest sum. Counsel for the plaintiff was Jerome J. Berkowitz now of 330 2nd Avenue South #450, Minneapolis, Minnesota 55401. Phone: (612)348-1235. Counsel for the International Association of Fire Fighters Local 1643 was Gerald Barrett of Ward, Keenan & Barrett, 2020 N. Central, Suite 1020, Phoenix, AZ 85004. Phone: (602)252-5606.

- (9) Julia Cook v. Calgas-Tempe, California Liquid Gas Corp. and Dillingham Corp., CIV 76-360 PHX WPC.

I represented the defendants in this action which I tried for two days before Judge William Copple of the United States District Court. It was a claim for compensation due under a contract. My cross-examination of the plaintiff reduced her credibility to the point that we were able to settle the case after the second day of trial for a very modest sum and to affirm her obligations under the ongoing contract. This occurred in March of 1980. Counsel for the plaintiff was John Perry of Favour and Quail, Prescott, AZ 86302-1433. While John Perry no longer appears in the Arizona State Bar Directory, John Favour can be reached at (520)445-2444.



- (10) Terry Irwin v. City of Chandler, CIV 79-247 CLH.

I represented the City of Chandler in this civil action under 42 U.S.C. § 1983 brought by a discharged police officer who claimed the city took employment action against him for exercising his First Amendment rights. In 1981, Judge Charles Hardy of the United States District Court granted my motion for summary judgment. The case presented the interesting issue of the propriety of granting summary judgment in First Amendment cases. Irwin appealed to the United States Court of Appeals for the Ninth Circuit where the case was fully briefed and scheduled for oral argument. But then Judge Thomas Tang of the United States Court of Appeals for the Ninth Circuit called counsel and informed us that the panel urged us to settle the case. This was an early experience with settlement conferences conducted by members of the United States Court of Appeals for the Ninth Circuit. We settled the case. Counsel for the plaintiff was Robert F. Clarke, 1100 E. Washington St., Suite 200, Phoenix, AZ 85034. Phone: (602)277-3002.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I prepared and filed six briefs in the United States Supreme Court: National Farmers Union Insurance Co. v. Crow Tribe of Indians, No. 84-320 (Amicus Brief for Salt River Project and Arizona Public Service Co.); Kerr-McGee Corporation v. Navajo Tribe of Indians, No. 84-68 (Amicus Brief for Salt River Project); Nevada v. United States, Nos. 81-2245, 81-2276, and 83-38 (Amicus Brief for Salt River Project); Del Rio Land, Inc. v. City of Phoenix, No. 81-1341 (Brief in Opposition for the City of Phoenix); Merrion v. Jicarilla Apache Tribe, Nos. 80-11, 80-15 (Amicus Brief for Salt River Project); Washington v. Confederated Tribes, No. 78-630 (Amicus Brief for Salt River Project).

I was retained in 1977 by the Senate of the United States to represent the Vice-Chairman of the American Indian Policy Review Commission, Cong. Lloyd Meeds, (202-628-1700) and draft his separate dissenting views to the Commission's Final Report 567 (1977). I appeared on the McNeil-Lehrer Report, PBS-TV, September, 1977, to debate the issues.

I was retained in 1978 by the United States House of Representatives to draft proposed legislation on federal/state/tribal jurisdiction and federal reserved water rights. H.R. 9950 and H.R. 9951, 95th Cong., 1st Sess. (1977).

I was a trial judge in the Superior Court of Arizona in Maricopa County for seven years. I tried several hundred cases from complex civil cases to first degree murder cases. I have heard and decided thousands of motions and have sentenced hundreds of defendants.

I have been a member of the Arizona Supreme Court for nine years. Much of our work involves the exacting review of death penalty cases.

The following is a list of members of the legal community with whom I have had recent contact:

John B. Weldon, Jr.  
Salmon, Lewis and Weldon  
444 N. 32nd St., Suite 200  
Phoenix, AZ 85018  
(602)801-9063

Arthur E. Romley  
400 E. Van Buren St.  
Suite 230  
Phoenix, AZ 85004  
(602)252-3400

The Honorable Barry G. Silverman  
United States Court of Appeals  
for the Ninth Circuit  
230 N. First Ave.  
Phoenix, AZ 85025  
(602)514-7022

The Honorable Thomas W. O'Toole  
Superior Court of Arizona  
in Maricopa County  
201 W. Jefferson  
Phoenix, AZ 85003  
(602)506-5994

The Honorable Barry C. Schneider  
Superior Court of Arizona  
in Maricopa County  
201 W. Jefferson St.  
Phoenix, AZ 85003  
(602)506-3351

Dean Richard Morgan  
William S. Boyd Law School  
UNLV  
4505 Marilyn Parkway  
Las Vegas, NV 89154  
(702)895-1876  
Former Dean at ASU Law School

The Honorable Stephen M. McNamee  
United States District Court  
for the District of Arizona  
230 N. First Avenue  
Phoenix, AZ 85025  
(602)514-7016

The Honorable Paul G. Rosenblatt  
United States District Court  
for the District of Arizona  
230 North First Avenue  
Phoenix, AZ 85025  
(602)514-7200

The Honorable John M. Roll  
United States District Court  
for the District of Arizona  
55 E. Broadway  
Tucson, AZ 85701  
(520)620-7144

The Honorable Ruth V. McGregor  
Supreme Court of Arizona  
1501 W. Washington St.  
Phoenix, AZ 85007  
(602)542-5789

The Honorable Edward C. Voss  
Arizona Court of Appeals  
Division One  
1501 W. Washington St.  
Phoenix, AZ 85007  
(602)542-4827

James D. Howard, Jr.  
2701 E. Camelback Rd.  
Suite 361  
Phoenix, AZ 85016  
(602)468-9400

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock; options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am a participant in the Arizona Elected Officials Retirement Plan for judges. I accrue at a rate of 4% per year and have served 16 years.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will resolve all potential conflicts in accordance with the Code of Conduct for United States Judges and all applicable statutes. I would recuse myself in any proceeding in which my impartiality might reasonably be questioned and I would recuse myself in any matter in which my wife and I have a financial interest. I would also recuse myself in any matter in which I may have participated as a Justice of the Supreme Court of Arizona or a Judge of the Superior Court of Arizona in Maricopa County.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments, or agreements to pursue outside employment. I presently teach a course in judging at Arizona State University Law School and if permitted by applicable federal rules and policies would consider doing so in the future.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

My net worth statement is supplied.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

AO-10  
Rev. 1/2001FINANCIAL DISCLOSURE REPORT  
FOR NOMINEESReport Required by the Ethics  
in Government Act of 1978.  
(5 U.S.C. App., §§101-111)

1. Person Reporting (Last name, first, middle initial) <u>MARTONE, FREDERICK J.</u>	2. Court or Organization <u>DISTRICT COURT - ARIZONA</u>	3. Date of Report <u>9-12-01</u>
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) <u>U.S. DISTRICT JUDGE</u>	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>9-10-01</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period <u>JANUARY 1, 2000</u> <u>TO AUGUST 15, 2001</u>
7. Chambers or Office Address <u>SANDRA DAY O'CONNOR U.S. COURTHOUSE</u> <u>401 W. WASHINGTON ST.</u> <u>PHOENIX, AZ 85003</u>	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions.)

1 JUSTICE SUPREME COURT OF ARIZONA

2 \_\_\_\_\_

3 \_\_\_\_\_

## II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of Instructions.)

DATE

PARTIES AND TERMS

☐

NONE (No reportable agreements.)

1 1985-2001 STATE OF ARIZONA ELECTED OFFICIALS RETIREMENT PLAN;

2 PENSION UPON RETIREMENT.

3 \_\_\_\_\_

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)☐

NONE (No reportable non-investment income.)

1 1999 SUPREME COURT OF ARIZONA \$ 118,000.

2 2000 SUPREME COURT OF ARIZONA \$ 120,500.

3 2001 SUPREME COURT OF ARIZONA \$ 126,525.

4 1999 MESA LUTHERAN HOSPITAL \$

5 2000 MESA LUTHERAN HOSPITAL \$

2001 BANNER HEALTH \$

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting <i>MARTONE, FREDERICK J.</i>	Date of Report <i>9-12-01</i>
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**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1		<i>EXEMPT.</i>
2		
3		
4		
5		
6		
7		

**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1		<i>EXEMPT.</i>	\$
2			\$
3			\$
4			\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

\*Value Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000  
 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Date of Report

MARTONE, FREDERICK J.

9-12-01

## VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

A Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C Order value at end of reporting period		D Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (C) Date (m)	(1) Value Code (J-P)	(2) Method (Q) (Q-V)	(1) Type (e.g., buy, sell, redemption)	(2) Date (m)	(3) Value (U-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets,					EXEMPT				
<sup>1</sup> BANK ONE ACCOUNTS	A	Ints	K	T	"				
<sup>2</sup> IRA (MERRILL LYNCH	D	Int	M	T	"				
<sup>3</sup> RETIREMENT MONEY ACCOUNT									
<sup>4</sup> VERIZON COMMON STOCK	A	Div.	J	T	"				
<sup>5</sup> AT&T COMMON STOCK	A	Div.	J	T	"				
<sup>6</sup> LUENT COMMON STOCK	A	Div.	J	T	"				
<sup>7</sup> AVAYA COMMON STOCK	A	Div.	J	T	"				
<sup>8</sup> JOHN C. LINCOLN HEALTH									
<sup>9</sup> NETWORK RETIREMENT PLAN	A	Div.	K	T	"				
<sup>10</sup> - N+B PARTNERS TRUST									
<sup>11</sup> - FIDELITY EQUITY GROWTH									
<sup>12</sup> - N+B GENESIS TRUST									
<sup>13</sup> - FIDELITY ADVISOR GROWTH OPP									
<sup>14</sup> - WELLS FARGO S&P 500 STOCK									
<sup>15</sup> - INVESCO DYNAMICS									
<sup>16</sup> - JANUS WORLDWIDE									
<sup>17</sup> - TEMPLETON GROWTH									

1. Income/Gain Codes: A=\$1,000 or less (See Col. B1, D4); B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000; F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H=\$1,000,001-\$5,000,000; IZ=More than \$5,000,000.	
2. Value Codes: J=\$15,000 or less (See Col. C1, D3); K=\$15,001-\$50,000; L=\$50,001-\$100,000; M=\$100,001-\$250,000; N=\$250,001-\$500,000; O=\$500,001-\$1,000,000; P=\$1,000,001-\$5,000,000; Q=\$5,000,001-\$25,000,000; R=\$25,000,001-\$50,000,000; S=More than \$50,000,000.	
3. Value Method Codes: Q=Appraisal (See Col. C2); R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book value; V=Other; W=Estimated.	



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting <b>MARTONE, FREDERICK J.</b>	Date of Report <b>9-12-01</b>
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**VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)

Description of assets (including trust assets)  Place "0" after each asset exempt from prior disclosure.	Income during reporting period		Gross value at start of reporting period		Transactions during reporting period				
	(1) Amt. Code (A-I)	(2) Type (e.g., div., rent or int.)	(3) Value Code (J-P)	(4) Value Method Code (Q-W)	(5) Type (e.g., buy, sell, mortgage redemption)	(6) Date Month Day	(7) Value Code (J-P)	(8) Gain Code (A-H)	(9) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)					EXEMPT				
18 BANNER 401K	A	Div	J	T	"				
19 - FIDELITY BALANCED									
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34									
35									

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1, D4) B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,401-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 H=\$100,001-\$5,000,000 I=\$5,000,001-\$5,000,000
2 Value Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000
3 Value Method Codes: Q=Appraisal (See Col. C2) U=Book value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market

MARTONE, FREDERICK J.

9-12-01

	A - Description of Assets (including trust assets)		B - Income during reporting period		C - Gross value at end of reporting period		D - Transactions during reporting period				
			(1)	(2)	(1)	(2)	(3) If not exempt from disclosure				
	Place "X" after each asset exempt from prior disclosure		Asset Code (A-H)	E Type (e.g., div., rent or int.)	Value Code (J-P)	Value Method Code (Q-W)	E Type (e.g., buy, sell, merger, redemption)	(2) Date Month Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions)										
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1	Income/Gain Codes: (See Col. B1, D4)		A=\$1,000 or less F=\$50,001-\$100,000		B=\$1,001-\$5,000 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 I=\$15,001-\$50,000		E=\$15,001-\$50,000
2	Value Codes: (See Col. C1, D3)		J=\$15,000 or less N=\$250,001-\$500,000 P=\$15,000,001-\$50,000,000		K=\$15,001-\$50,000 O=\$500,001-\$1,000,000		L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000 P2=More than \$5,000,000		M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000		
3	Value Method Codes: (See Col. C2)		Q=Appraisal U=Book value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market		

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

MARTONE, FREDERICK J.

Date of Report

9-12-01

## VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)

A Description of Asset (including trust assets)  Place "00" after each asset if it is exempt from prior disclosure.	B Income During reporting period		C Gross value at start of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Type Code (A-H)	Type (e.g., div., rent or int.)	Value Code (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, transfer, redemption)	(2) Date Month	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
54									
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70									

1	Income/Gain Codes: (See Col. B1, D4)	A=\$1,000 or less	B=\$1,001-\$2,500	C=\$2,501-\$5,000	D=\$5,001-\$15,000	E=\$15,001-\$50,000
2	Value Codes: (See Col. C1, D3)	F=\$50,001-\$100,000	G=\$100,001-\$1,000,000	H=\$1,000,001-\$5,000,000	I=\$5,000,001-\$25,000,000	J=\$25,000,001-\$50,000,000
3	Value Method Codes: (See Col. C2)	K=\$15,000 or less	L=\$15,001-\$50,000	M=\$50,001-\$100,000	N=\$100,001-\$250,000	O=\$250,001-\$500,000
		P=\$500,001-\$1,000,000	Q=\$1,000,001-\$5,000,000	R=\$5,000,001-\$25,000,000	S=\$25,000,001-\$50,000,000	T=\$50,000,001-\$100,000,000
		U=Appraisal	V=Cost (real estate only)	W=Assessment	X=Cash/Market	Y=Other

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting <i>MARTONE, FREDERICK J.</i>	Date of Report <i>9-12-01</i>
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## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

*SEPTEMBER 12, 2001*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current <sup>6/01</sup> financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	37,737	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	3,270	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	2,150
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	
Real estate owned-add schedule	350,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	155,000		
Cash value-life insurance			
Other assets itemize:			
AZ Retirement Contributions	102,800		
IRA	143,133		
401K	20,909	Total liabilities	2,300
		Net Worth	810,497
Total Assets	812,849	Total liabilities and net worth	812,849
CONTINGENT LIABILITIES	NONE	GENERAL INFORMATION	
As endorser, cosigner or guarantor		Are any assets pledged? (Add schedule)	NO
On leases or contracts		Are you defendant in any suits or legal actions?	NO
Legal Claims		Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax			
Other special debt			

670

Schedule  
6/01

Listed securities:

Verizon, 54 shares @52.19 = 2,818.26

AT&T, 18 shares @20.72 = 372.96

Lucent, 12 shares @5.61 = 67.32

Avaya, 1 share @11.47 = 11.47

Real estate owned:

My single family house in Phoenix, Arizona. Estimated fair market value based on neighborhood sales.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Canon 4(G), of the Arizona Code of Judicial Conduct, Rule 81, Rules of the Supreme Court, prohibits a judge from practicing law. Canon 4(B) of that same Code allows a judge to teach and participate in extra judicial activities concerning the law, the legal system and the administration of justice. For the past five years, I have taught a course in Judging at the Arizona State University Law School without compensation. I also regularly speak to school groups and have participated in the Arizona high school mock trial program. When I was a lawyer, I gave my time to professional and civic groups, including service as a Cub Scout leader.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no federal selection commission. Senator Jon Kyl, knowing of my interest in the federal judiciary, invited me to apply. I was interviewed by the Honorable Alberto R. Gonzales, counsel to the President, and his colleagues on May

29, 2001. At the request of Mr. Viet Dinh, U.S. Dept of Justice, I filled out the Senate and White House questionnaires, the National Security (FBI) questionnaire, a medical questionnaire, the Financial Disclosure Report and various forms. I was interviewed by the FBI and Justice Department officials. I was nominated on September 10, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal Judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to board classes of individuals;
- c. a tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and



- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

A trial judge must be faithful to the law, whatever his or her personal beliefs. This is the essence of being fair and impartial. A judge must respect the separation of powers among the three branches of government. A judge must be mindful that federal courts have limited jurisdiction.

Judicial self-restraint is the hallmark of good judging. The doctrines of standing, ripeness and "case or controversy" play important roles in ensuring that judicial power is properly exercised.

Senator FEINSTEIN. Thank you very much.  
Mr. Reeves?

**STATEMENT OF DANNY C. REEVES, NOMINEE TO BE DISTRICT  
JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY**

Mr. REEVES. Thank you. My wife is here with me today, Cindy Reeves.

Senator FEINSTEIN. Welcome.

Mr. REEVES. I am certainly pleased to have her here. My children could not make it today, Adam, who is 16, and Joseph, who is 11. They are both in school and are looking forward to a full report also.

[The biographical information of Mr. Reeves follows.]

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Response: Danny Clyde Reeves (no other names have been used.)

2. Address: List current place of residence and office address(es).

Response: (Residence) Lexington, Kentucky;

(Office) Greenebaum Doll & McDonald, PLLC, 333 West Vine Street, Suite 1400, Lexington, Kentucky 40507.

3. Date and place of birth.

Response: August 1, 1957; Corbin, Kentucky.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Response: Married; Cindy Lea Woolum Reeves; Speech Pathologist; currently employed by Eastern Kentucky University and Model Laboratory School (on the campus of Eastern Kentucky University); Office Address: Eastern Kentucky University, Richmond, Kentucky 40475

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Response: (College) Eastern Kentucky University (attended: August 1975 to May 1978) Bachelor of Arts (Major: Political Science) Degree Received: May 14, 1978;

I also attended Cumberland College in Williamsburg, Kentucky, during the summer of 1974 as part of the college's high school junior program.

(Law School) Salmon P. Chase College of Law, Northern Kentucky University (attended: August 1978 to May 1981); Juris Doctor, Degree Received: May 9, 1981.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Response: (1983 to Present) Greenebaum Doll & McDonald, PLLC (address listed above). I was employed as an associate from 1983 to 1988. I became a partner with the firm in 1988. When the firm adopted PLLC status, partners became members.

(1981 to 1983) I was employed as a law clerk with Judge Eugene E. Siler, Jr., United States District Judge for the Eastern and Western Districts of Kentucky. My primary office address was: United States Courthouse, Room 207, London, Kentucky 40741

(1979 to 1980) I was employed part-time as a law clerk with the firm Klette & Klette in Covington, Kentucky. During this time, I also worked part-time as an assistant librarian at the Chase Law School Library.

(1979) During the summer of 1979, I worked at the General Motors Assembly Plant in Norwood, Ohio

(1978) During the summer of 1978, I worked as a laborer with Straight Creek Mining Company (No. 3 Strip Mine) located near Pineville in Bell County, Kentucky. I also held this employment during the summer of 1976.

I have been a director of the Volunteer Center of the Bluegrass (approximately 1988 to 1992); a director of the Kentucky Museum of Natural History, Inc. (approximately 1988 to 1991) and an officer and director of the Bluegrass Youth Hockey Association (approximately 1995 to 1997).

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Response: I have not served in the military.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Response: Following my graduation from college, I received a regional scholarship to attend Chase Law School. In addition, during my senior year of college, I received the A. Y. Lloyd Award, presented to the top Political Science student. During college, I was a member of the Political Science Honorary Society (Pi Sigma Alpha) and the Senior Honor Society (Collegiate Pentacle). I graduated from college with high distinction. In addition, I was awarded Order of Curia (top 10% of

graduating class) following graduation from law school.  
I have not received any fellowships or honorary degrees.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Response: Kentucky Bar Association (since approximately 1981);  
American Bar Association (since approximately 1981);  
Federal Bar Association (since approximately 1994).

I was an officer of the Kentucky Chapter of the Federal Bar Association from approximately 1994 to 1999, serving as Secretary, Treasurer, Vice-President and President.

For approximately two years (1996 to 1998), I served with several state court judges and attorneys on the Kentucky Bar Association's Judicial Concerns Commission. The commission addressed and made recommendations to the Board of Governors and President of the KBA concerning a number of issues including salary and retirement concerns, security issues and concerns, and questions regarding the selection and retention process for state judges at the district, circuit and appellate levels.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Response: I do not belong to any organizations that are active in lobbying activities. I am a member and advisor of the Federalist Society of Central Kentucky (Lawyers' Division). My family holds a non-equity membership with Andover Golf & Country Club, Lexington, Kentucky. In addition, I have an individual, annual membership to Gold's Gym in Lexington, Kentucky.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Response: Supreme Court of Kentucky: September 30, 1981;  
United States Court of Appeals for the Sixth Circuit: December 18, 1981;  
United States District Court for the Western District of Kentucky: May 18, 1982;  
United States District Court for the Eastern District of Kentucky: July 27, 1982;

United States Supreme Court: December 1, 1986.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Response:

(Published Writings)

1. The Nuisance Bill, Kentucky's Restatement of the Law Fayette County Bar Association, Bar News, May-June 1991 issue (copy attached);
2. Summary Judgment Practice in Kentucky, Kentucky Bar Association Annual Convention, June 5, 1992 (copy attached);
3. Title IX Guidelines and Assistance for Title IX Compliance at the High School Level (1998) (prepared for use by public, private and parochial high schools in Kentucky) (copy attached);
4. Injunctive Relief: A Practical Guide for Kentucky Lawyers, Appellate Review, Inc. 1998 (co-authored with Margaret A. Miller; prepared for use by Kentucky attorneys) (copy attached);
5. Title IX Athletics Audit (1999-2000) (copyrighted 1999 by the Kentucky High School Athletic Association and Good Sports, Inc. for exclusive use by Kentucky High Schools) (copy attached);
6. Equity in Athletics: Do Reasonable Accommodations Alter the Game? Green River Regional Educational Cooperative, Inc., Western Kentucky University, November 1999 (prepared for use by high school administrators throughout Kentucky) (copy of outline attached).

(Speeches Relating To Various Legal Issues)

1. Legal Responsibilities of Using Volunteers, Central Kentucky Volunteer Administrators, November 1991 (date approximate) (presented to various members of volunteer groups);

2. Summary Judgment Practice in Kentucky, Kentucky Bar Association, 1992 Annual Convention (presented to members of KBA June 5, 1992; written materials referenced above);
3. Federal Law Update, Kentucky Bar Association District Bar Meetings, Fall 1992 (presented to attorneys at various locations throughout Kentucky);
4. Common Law Nuisance Claims in Kentucky (in-house seminar for firm clients), Spring 1993 (approximate date);
5. Representing an Athlete in an NCAA Investigation, University of Kentucky Sports Management Seminar (approximate date: October 1990) (presentation to graduate level students at University of Kentucky);
6. General Topics Concerning High School Athletics And Enforcement of Athletic Rules and Regulations - annual presentation to graduate students enrolled in University of Kentucky Sports Management Seminar (1995 through 2000; approximate dates);
7. Title IX Requirements at the High School Level, Kentucky High School Athletic Association's Annual Delegate Assembly Meeting, 1998, 1999, 2000 and 2001; Kentucky Athletic Directors' Association, 1998, 1999, 2000; Kentucky Principals' Association, 1998; Green River Regional Education Cooperative, Inc., November 1999 (approximate date);
8. Preparing for Litigation Before Suit is Filed, (in-house seminar for client) December 1997 (approximate date);
9. Equity in Athletics: Do Reasonable Accommodations Alter the Game? Conference on Legal Issues in Education, Green River Regional Educational Cooperative, Inc., Western Kentucky University, November 1999 (approximate date) (presentation to High School administrators throughout Kentucky)
10. Title IX - Equity Issues in Athletics, Education Law Seminar, University of Kentucky College of Law, January 30, 2001 (University of Kentucky law students)
11. During the period October 1999 through the present, I have spoken to approximately 50 gender equity committees at various high schools throughout Kentucky as part of the Title IX auditing process conducted by the Kentucky High School Athletic Association. Each presentation was followed by a public comment session during which Title IX issues were discussed with parents, teachers, coaches, athletic boosters and members of the press. An outline used in connection with audits conducted during 2000-2001 is attached.

12. Update of Legal Issues in Athletics' presented in April 2001 at the Kentucky High School Athletic Directors' Association's annual meeting.

13. Health: What is the present state of your health? List the date of your last physical examination.

Response: My overall health is good. My last complete physical examination was April 3, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Response: I have not held judicial office previously.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Response: Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Response: I have not held public office.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Response: After graduating from law school, I accepted a federal clerkship with the Honorable Eugene E. Siler, Jr. (August 1981 to July 1983). At the time of this clerkship, Judge



Siler held the position of United States District Judge for the Eastern and Western Districts of Kentucky. Judge Siler is currently a member of the United States Court of Appeals for the Sixth Circuit.

2. whether you practiced alone, and if so, the addresses and dates;

Response: I have not practiced alone since graduating from law school.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Response: Following my judicial clerkship, I joined the Lexington office of Greenebaum Doll & McDonald in August 1983. I became an equity partner with the firm in 1988. I have remained with the Greenebaum firm since 1983 and have not practiced with any other firm or governmental agency.

Although I have utilized other Greenebaum offices and handled cases in a number of other cities (Covington and Louisville, for example), my primary office address has been Suite 1400, 333 West Vine Street, Lexington, Kentucky.

During 1997, my firm adopted a formal Practice Group management structure. Since that time, I have been the Practice Group Manager for the Lexington Litigation and Dispute Resolution Practice Group.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Response: My practice has been limited to litigation since joining the Greenebaum firm in 1983. Initially, my practice involved general commercial litigation matters. Since approximately 1990, I have handled an increasing number of litigation matters in the mineral and environmental areas. Further, since joining the firm, a significant part of my practice has been in federal court.

During the mid- to late-1980's, I handled a number of litigation matters for the Federal Deposit Insurance Corporation throughout Eastern Kentucky. During this

period and continuing into the 1990's, I also represented Columbia Gas Transmission Corporation in a variety of cases filed in various state and federal courts in Eastern Kentucky.

During the late 1980's, I worked on a matter involving the thoroughbred industry filed in federal court in Lexington (Stratmore v. Goodbody, 886 F.2d 189 (6<sup>th</sup> Cir.), cert. denied, 109 S. Ct. 2065 (1989)). This case is discussed below.

Throughout the 1990's, I have represented Ashland Inc. in a number of litigation matters. This representation involved civil actions filed in West Virginia and, more recently, in Eastern Kentucky. Since 1993, I have been lead counsel for Ashland Inc. and its subsidiary, Ashland Exploration Inc., in a number of cases involving oil historical oil production activities in Kentucky. Although many of these cases have been settled or otherwise resolved, several remain pending in federal and state courts. The plaintiffs in these cases claim that, as a result of these operations, their properties have been contaminated with Naturally Occurring Radioactive Material (NORM). Two of these cases are discussed below.

I have also represented a number of national and international corporations in general commercial litigation matters throughout the 1980's and 1990's. This representation has included companies such as Philips Lighting Company, Conopco (Ragu Foods Co.) and Tomen America, Corp. (the American subsidiary of a Japanese trading company).

Since 1983, I have also represented the Kentucky High School Athletic Association (KHSAA) in dozens of cases throughout the state. While a good percentage of this representation has involved defending the KHSAA in injunctive proceedings in state and federal courts, I have also represented the association in personal injury cases and in numerous administrative proceedings.

In addition to the representation discussed above, I have been retained to assist the KHSAA in complying with directives from the Kentucky Board of Education that all member schools comply with the gender equity provisions of Title IX of the Education Amendments of 1972 as it pertains to athletics (1998 to the present). I have also defended the KHSAA in litigation involving Title IX issues (Horner v. KHSAA - also discussed below).

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Response: My typical clients and former clients would include large and medium size companies as well as individuals. In the mineral area, I have represented coal companies as well as companies involved in oil and gas production, refinement and distribution. I have also represented agencies such as the FDIC. As mentioned previously, I have represented the Kentucky High School Athletic Association since entering private practice in 1983.

My areas of practice have included general commercial and corporate litigation, sports-related litigation, equine and environmental litigation.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Response: I appear in both federal and state courts throughout Kentucky on a frequent basis. I would estimate that, on average, I am in some state or federal court on a weekly or biweekly basis.

2. What percentage of these appearances was in:
  - (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.

Response: At the current time, I estimate that:

- (a) 20% of my appearances are in federal court; and
- (b) 80% of my appearances in state circuit or appellate courts.

3. What percentage of your litigation was:
  - (a) civil;
  - (b) criminal.

Response: At the present time, 100% of my practice is civil/administrative. However, historically, I would estimate that:

- (a) 95% civil; and
- (b) 5% criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Response: (a) If the question includes disposition via orders of dismissal and summary judgment, I would estimate that I have handled in excess of 150 cases to judgment. I have been lead counsel in approximately 2/3 of these cases and associate counsel in the remaining 1/3 of these cases.

(b) If the question relates only to matters resolved through trial, I would estimate the number at approximately 15 cases. I would also estimate that I was lead counsel in approximately 2/3 of these cases and co-counsel or associate counsel in the remaining 1/3 of these cases.

5. What percentage of these trials was:  
 (a) jury;  
 (b) non-jury.

Response: (a) 50% jury;  
 (b) 50% non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;  
 (b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
 (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Response: 1. Horner v. Kentucky High School Athletic Association, et al., 43 F.3d 265 (6<sup>th</sup> Cir. 1994) and 206 F.3d 685 (6<sup>th</sup> Cir.), cert. den., 121 S.Ct. 69 (2000)

(Date of representation: 1992 to 2000)

(Judges: U.S. District Judge Edward Johnstone  
 U.S. Magistrate-Judge James Moyer)

I was retained to defend the Kentucky High School Athletic Association in an action alleging that the failure to sanction a particular sport for female high school students violated the Equal Protection

clause of the U. S. Constitution, Title IX of the Education Amendments of 1972, and various provisions of state law. The plaintiffs also sought monetary damages and class certification. Defendants were initially granted summary judgment on all claims and plaintiffs appealed. The Sixth Circuit initially affirmed the dismissal of plaintiffs' equal protection claims, but remanded the case for additional consideration of plaintiffs' Title IX claim. After further proceedings, the district court again entered judgment in favor of the defendants on all remaining claims, including plaintiffs' request for attorney's fees. Plaintiffs appealed this decision. The Sixth Circuit affirmed the lower court's judgment. The Supreme Court denied plaintiffs' petition for a writ of certiorari.

I was lead counsel in this case, responsible for all discovery, preparation of legal memoranda and oral arguments on behalf of the KHSAA.

Opposing counsel for the plaintiffs included: Donald E. Armstrong, Jr., (now, a state district judge), Jefferson District Court, Fifth Division, 600 W. Jefferson Street, Louisville, Kentucky 40202, (502) 595-4632, and Gregory W. Butrum, 513 S. 5<sup>th</sup> Street, Louisville, Kentucky 40202, (502) 589-2775;

Primary counsel for co-defendant Kentucky State Board of Education was: Robert E. Stopher, Boehl, Stopher & Graves, Suite 2300, 400 W. Market St., Louisville, Kentucky 40202-3354, (502) 589-5980.

2. Stratmore v. Goodbody, 866 F.2d 189 (6<sup>th</sup> Cir.), cert. den., 109 S.Ct. 2065 (1989)

(Date of representation: 1985 to 1989)

(Judge: U.S. District Judge Henry R. Wilhoit, Jr.)

My firm was retained to defend an anti-trust action alleging that a thoroughbred syndication agreement containing a no auction provision relating to the disposition of stallion shares and seasons violated the Sherman Act. (Notable members of the syndicate included Sheik Maktoum of Dubai, the Queen of England, and several prominent thoroughbred owners and breeders.) After substantial discovery, the district court entered summary judgment in favor of the defendants. The plaintiff unsuccessfully

appealed the district court judgment to the Sixth Circuit and sought a petition for certiorari from the United States Supreme Court. The Court denied the petition. I assisted in preparing all legal memoranda filed with the district court, Sixth Circuit Court of Appeals and United States Supreme Court.

I was retained as co-counsel in the case and represented the syndicate's officers and agents. My co-counsel included: Richard Flynn [deceased] and Stephen Hill, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006, (202) 736-8000, and John S. Reed, Reed, Weitkamp Schell Cox & Vice, Suite 2400, Citizens Plaza, Louisville, Kentucky 40202, (502) 589-1000;

The plaintiff was represented by Joseph Alioto, Suite 2500, 650 California, San Francisco, California 94108-2606, (415) 434-2100.

3. The Limited Corporation v. Columbia Gas Transmission Corporation, 759 F.Supp. 343 (E.D. Ky. 1990), affirmed, 951 F. 2d 110 (6<sup>th</sup> Cir. 1991)

(Date of representation: 1989 to 1991)

(Judges: U. S. District Judge Karl F. Forester  
U. S. District Judge Joseph M. Hood)

This case was filed on behalf of Columbia Gas Transmission Corp. to recover the cost of relocating pipelines to enable a coal company to mine coal pursuant to a mineral lease. The lease provided that the oil and gas estate was the subservient estate. After discovery and briefing, the district court held that the owner of the coal lease, the dominant estate, violated its duty to avoid interference with the rights of the owner of the subservient estate. The Sixth Circuit affirmed the district court's judgment.

I prepared briefs filed with the district and circuit courts and argued various motions, including the motion for summary judgment filed with the district court, on behalf of Columbia Gas. My co-counsel (John West of Greenebaum Doll & McDonald; address listed above) was responsible for arguments before the Sixth Circuit.

The defendant/appellant was represented by William T. Scott, 234 2d Street, Pikeville, Kentucky 41502, (606) 432-2030

4. Woodie Cantrell, et. al v. Ashland Inc., et. al., Commonwealth of Ky., Johnson Cir. Ct., No. 97-CI-442; (removed to federal court); U.S. District Court, E.D. of Ky., Pikeville Div., No. 01-188; (pending)

(Date of representation: 1997 to present)

(Judges: Circuit Judge James Knight [deceased]  
Circuit Judge Daniel Sparks;  
U.S. District Judge Joseph M. Hood

This case was instituted by several property owners in the Martha area of Johnson and Lawrence Counties alleging that Ashland Inc. and its subsidiary, Ashland Exploration, Inc., contaminated their properties with Naturally Occurring Radioactive Material (NORM) during production operations conducted from approximately 1917 through 1987. In addition to property damages, the plaintiffs also seek medical monitoring in the case. The case has been removed to federal court.

There are currently 59 plaintiffs in this case and approximately 30 separate parcels of property in issue. I am lead counsel in this and other related cases, responsible for conducting discovery, filing and arguing motions, conducting mediation and trying the cases if they are not otherwise resolved. Co-counsel for the defendants include: Michael J. Schmitt, Porter, Schmitt, Jones & Banks LLP, 327 Main Street, P.O. Drawer 1767, Paintsville, Kentucky 41240-1767, (606) 789-3747 and Ralph H. Johnson, Leon B. Taranto and Lynn K. McKay, Schmeltzer, Aptaker & Shepard, P.C., The Watergate, Suite 1000, 2600 Virginia Avenue, Northwest, Washington, D.C. 20037-1905, (202) 333-8800

Opposing counsel for the plaintiffs include: Michael S. Endicott, 225 Court Street, P.O. Box 181, Paintsville, Kentucky 41240, (606) 789-8232; Ned B. Pillersdorf, Pillersdorf, DeRossett & Barrett, 18 West Court Street, Prestonsburg, Kentucky 41653, (606) 886-6090; George Chandler, Reich O. Chandler, Kirk Mathis, Darin Walker, Chad Viers, Chandler Law Offices, 207 E. Frank, Suite 105, P.O. Box 340, Lufkin, Texas 75902-0340, (409)

632-7778; Broadus Spivey and Price Ainsworth, Spivey & Ainsworth, 48 East Avenue, Austin, Texas 78701-4320, (512) 474-6061; Charles Ainsworth, Spivey & Ainsworth, 8441 Gulf Freeway, Suite 305, Houston, Texas 77017, (713) 874-0800.

5. Natural Resources Defense Council, Inc. v. Newport Steel Corp., U. S. Dist. Ct., E. D. Ky., Covington Division, No. 89-110

(Date of representation: 1989 to 1993)

(Judges: U.S. District Judge William O. Bertelsman  
U.S. District Judge Joseph M. Hood)

This action was filed by the Natural Resources Defense Council alleging various violations of the Clean Water Act by Newport Steel Corp. After extensive briefing concerning standing and other related issues, the case was subsequently resolved and a Consent Decree entered on terms favorable to the defendant.

I was lead counsel for the defendant in the case, responsible for all briefs, pleadings and arguments. Lead counsel for the plaintiff was: Nancy S. Marks, Natural Resources Defense Council, Inc., 40 W. 20<sup>th</sup> Street, New York, New York 10011 (212), 727-4405.

6. Barbara Bartrum, et al. v. Ashland Oil, Inc., et al., U. S. Dist. Ct., E. D. Ky., Ashland Div., No. 93-143

(Date of representation: 1993 to 1996)

(Judge: U.S. District Judge Henry R. Wilhoit, Jr.)

This was the first NORM case filed against Ashland and its subsidiary (see discussion above under item 4). Six plaintiffs were initially named as plaintiffs in this action seeking, inter alia, class certification. After discovery and briefing, the district court denied the plaintiffs' motion for class certification. The case was settled after dismissal of several additional claims and parties.

I was selected as lead counsel for the defendants and was responsible for all briefs filed with respect to class certification and related issues. In addition, I was responsible for all arguments



before the district court on discovery issues and other matters.

Co-counsel for the defendants included: Ralph H. Johnson, Leon B. Taranto and Lynn K. McKay, Schmeltzer, Aptaker & Shepard, P.C., The Watergate, Suite 1000, 2600 Virginia Avenue, Northwest, Washington, D.C. 20037-1905, (202) 333-8800.

Lead counsel for the plaintiffs was: Jeffrey Harmon, Cors & Bassett, 537 East Pete Rose Way, Suite 400, Cincinnati, Ohio 45202, (513) 852-8200.

7. The Freeman Corporation v. Tomen America Corp., U. S. Dist. Ct., E. D. Ky., Lex. Div., No. 91-338

(Date of representation: 1991 to 1993)

(Judge: U.S. District Judge Henry R. Wilhoit, Jr.)

I was retained as Defendant Tomen America's lead counsel in this case. The plaintiff claimed that the defendant, a Japanese-owned trading company, had breached a long-term contract to purchase wood veneer manufactured at plaintiff's Clark County, Kentucky operations. The plaintiff sought substantial lost profits and punitive damages. The jury returned a judgment for the plaintiff but refused to award punitive damages. The case was subsequently resolved prior to appeal.

The plaintiff was represented by William Rambicure, Rambicure, Miller, Kuebler & Pisacano, PSC, 219 E. High Street, Lexington, Kentucky 40588-4188, (859) 253-6713 and Duane Cook, 2424 Stamping Ground Road, Stamping Ground, Kentucky 40379, (502) 535-4700.

8. River Valley Foods v. Ragu Foods Company, U. S. Dist. Ct., W. D., Ky., Owensboro Div., No. 92-0097-O-C

(Date of representation: 1992 to 1994)

(Judge: U.S. District Judge Jennifer B. Coffman)

My firm was retained to defend this action alleging breach of long-term supply contract. The plaintiff in this case constructed a processing facility based on its understanding that the defendant would be obligated to purchase its product for use at a Western Kentucky processing plant. Plaintiffs

sought damages in excess of \$20,000,000. At trial, the jury awarded damages to the plaintiff, but in an amount less than the defendants' prior settlement offer.

I participated as lead counsel for the defendant. I handled all discovery, pre-trial proceedings and tried the case with co-counsel. Local counsel for the defendant was John Bickel, Thacker, Bickel, Hodskins & Thacker, LLP, 209 W. 4<sup>th</sup> Street, Owensboro, Kentucky 42302, (270) 926-4500

The plaintiff was represented by Stephen Pitt (lead counsel), Wyatt, Tarrant & Combs, 500 West Jefferson Street, Citizens Plaza, Louisville, Kentucky 40202, (502) 589-5235

9. Mizan Arabians v. The Pyramid Society, 821 F.2d 357 (6<sup>th</sup> Cir. 1987)

(Date of representation: 1986 est. to 1987)

(Judge: U.S. District Judge Henry R. Wilhoit, Jr.)

This case involved a horse sold at auction for less than the reserve price placed by the owner. The district court awarded damages to the seller following trial and both parties appealed. On appeal, the Sixth Circuit determined that the seller was entitled to recover the difference in the sales price and the reserve bid. In addition to handling the trial of the case, I prepared all briefs and argued the appeal before the Sixth Circuit.

The defendant was represented by Thomas Miller, Miller, Griffin & Marks, Suite 600, 271 Short Street, Lexington, Kentucky 40507-1292, (859) 255-6676

10. Hi-Tech Drilling and Development, Inc. v. Cumberland Falls Exploration Co. et al., Commonwealth of Ky., Whitley Cir. Ct., No. 87-CI-684

(Date of representation: 1987 to 1991)

(Judges: Circuit Judge Emby A. McKeehan  
Special Circuit Judge Raymond Lape)

This case involved competing oil and gas leases in the same parcel of property. I was retained to represent Defendant Cumberland Falls Exploration (CFE). After CFE conducted successful production operations, the holder of an earlier-issued lease sought to assume control of production operations. The circuit court initially issued summary judgment in favor of the plaintiff. However, the circuit court's judgment was reversed and remanded by the court of appeals. Following remand, the original circuit judge recused himself and a special judge was appointed to handle the case. Defendants obtained a judgment in their favor following a bench trial before the special judge.

I represented Defendant Cumberland Falls Exploration throughout the case and was responsible for all briefs, arguments, trial and appellate proceedings.

Other parties were represented by the following counsel: Plaintiff Hi-Tech Drilling and Development: Joe T. Roberts, 405 S. Main Street, London, Kentucky 40741, (606) 878-6111; and Benjamin K. Davis, 400 E. Sycamore Street, Williamsburg, Kentucky 40769, (606) 549-9600; Defendant Southern Gas Company: James Mooney, Mooney, Mooney & Mooney, 301 E. Main Street, Lexington, Kentucky 40507, (859) 259-2701; Defendants Delta Petroleum Corp. and John Gullitinan: Howard O. Mann, and Allen C. Trimble, Trimble & Mann, 104 N. Kentucky Avenue, Corbin, Kentucky 40701, (606) 528-0616; Defendants Leonard and Naomi Taylor: Larry E. Conley, 714 S. Main Street, Corbin, Kentucky 40701, (606) 528-3027, and Don Moses, P.O. Box 78, Jellico, TN (telephone number unavailable); and Defendant Sunshine Properties: Thomas Kupec, 228 Court Street, Clarksburg, West Virginia 26301 (telephone number unavailable).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Response: During the late 1980's I represented a student-athlete (Eric Manuel) on a pro bono basis as a part of the NCAA's investigation of the University of Kentucky's basketball

program. I spent several hundred hours in this pro bono representation.

In addition to the above-referenced representation, I have spoken frequently to various groups of students, coaches, athletic directors, teachers and administrators concerning issues that directly impact their day-to-day activities. Recently, the most popular topic of discussion has been Title IX compliance as it relates to high school and college athletic programs. Other topics such as drug testing, the impact and application of the ADA and sovereign immunity issues have been included in lectures and presentations.

I also make presentations each year to a graduate class at the University of Kentucky in the area of sports management. (These classes are discussed above.) I have made a similar presentation to an Education Law class at the University of Kentucky College of Law.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Response: Upon resignation from my law firm, I will receive the compensation I have earned to that date and will be reimbursed for capital paid to the firm during my tenure as a partner/member. In addition, I have a retirement account which I will retain. Otherwise, I will not receive any additional compensation or payments.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Response: In addition to becoming familiar with all applicable canons and rules applicable to judges, I plan to maintain a record of all clients of my law firm at the time of my resignation. In addition, I plan to maintain a record of litigation matters I have handled during the period 1998 to the time of my resignation. In the event a party appears before me and is indicated on either list; all counsel will be advised on the pertinent facts and their clients given the opportunity to request recusal.

At the present time, the only potential conflict-of-interest likely to occur based on financial concerns would involve stocks and other equities held in my retirement account. I plan to discuss possible conversion of stock to other equities with a financial planner if I am nominated. However, ownership of stock in a company directly or indirectly involved in any case before me would require recusal.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Response: I do not have any such plans, commitments or agreements.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Response: See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Response: See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Response: I have not held a position or played a role in any political campaign. From time-to-time, I have made financial contributions to various political candidates for local, state and federal offices. In addition, I have allowed yard signs to be placed on my property on occasion. However, I do not have records of the campaigns involved.

AO-10 (rev.  
1/2000)

# **FINANCIAL DISCLOSURE REPORT** **Nomination Report**

*Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 1, Sec. 101-112)*

<b>1. Person Reporting</b> (Last name, first, middle initial) Reeves, Danny C.	<b>2. Court or Organization</b> US Dist.Ct., ED of KY	<b>3. Date of Report</b> 08/06/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee	<b>5. Report Type (check type)</b> X Nomination, Date 08/02/2001 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 07/15/2001
<b>7. Chambers or Office Address</b> Greenebaum Doll & McDonald 333 West Vine St., Suite 1400 Lexington, Kentucky 40507	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b> Reviewing Officer _____ Date _____	
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the <b>NONE</b> box for each section where you have no reportable information. Sign on the last page.</p>		

## **I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Member	Greenebaum Doll & McDonald, PLLC
2	
3	

## **II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 04/30/95	Danny C. Reeves - Greenebaum Doll & McDonald; Membership Agreement provides for return of paid-in capital upon resignation from firm.
2	
3	

## **III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 12-31-00	Self-Employment Earnings - Greenebaum Doll & McDonald, PLLC	\$300,948
2 12-31-99	Self-Employment Earnings - Greenebaum Doll & McDonald, PLLC	\$201,062
3 12-31-00	Interest - Bank One	\$245
4 12-31-00	Interest - Republic Bank	\$357

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reeves, Darryl C.	08/06/2001

**IV. REIMBURSEMENTS — transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	NONE	Exempt
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	NONE	Exempt	
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	NONE		
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more



FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Reeves, Danny C.		Date of Report 08/06/2001					
VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions				(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)					
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month: Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income/assets, or transactions.)									
1 Fifth Third U. S. Treasury Money Market Fund (F)	C	Interest	L	T	Exempt				
2 U. S. Treasury Bonds		None	K	T	Exempt				
3 U. S. Treasury Bonds		None	J	T	Exempt				
4 U. S. Treasury Bonds		None	J	T	Exempt				
5 First USA Bank NA, Wilmington Certificate of Deposit	A	Interest	J	T	Exempt				
6 Household Bank FSB Certificate of Deposit	A	Interest	J	T	Exempt				
7 Household Bank FSB Certificate of Deposit	A	Interest	J	T	Exempt				
8 Manufacturers Certificate of Deposit	A	Interest			Exempt				
9 XY Provident NB Certificate of Deposit	A	Interest	J	T	Exempt				
10 Adobe Systems Inc. (Common Stock)		None	J	T	Exempt				
11 Alterra Corp. (Common Stock)		None	J	T	Exempt				
12 American Power Conversion Corp. (Common Stock)		None	J	T	Exempt				
13 Applied Materials Inc. (Common Stock)		None	J	T	Exempt				
14 Applied Micro Circuits Corp. (Common Stock)		None	J	T	Exempt				
15 AOL Time Warner (formerly, AOL) Common Stock		None	J	T	Exempt				
16 Arch Coal Inc. (Common Stock)	A	Dividend	J	T	Exempt				
17 Ateel Corp. (Common Stock)		None	J	T	Exempt				

1 Incl/Own Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$500,000,001 or more

3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market
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FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Reeves, Danny C.		Date of Report 08/06/2001	
<b>VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)  If not exempt from disclosure: (2) Date: Month- Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
18 AT&T Corp. (Common Stock)		None	J	T	Exempt
19 Avaya Inc. (Common Stock)		None	J	T	Exempt
20 Caterpillar Inc. (Common Stock)		None	J	T	Exempt
21 Central Parking Corp. (Common Stock)	A	Dividend	J	T	Exempt
22 Cisco Systems Inc. (Common Stock)		None	J	T	Exempt
23 Coca Cola Co. (Common Stock)	A	Dividend	J	T	Exempt
24 Du Pont E I De Nemours & Co. (Common Stock)		None	J	T	Exempt
25 Eastman Kodak Co. (Common Stock)		None	J	T	Exempt
26 First Trust Unit 333 Dow Target 10 Mutual Fund	A	Dividend			Exempt
27 First Trust Unit 333 S&P Target 10 Mutual Funds	A	Dividend			Exempt
28 First Trust Unit 373 NASDAQ Target 15 Mutual Funds		None			Exempt
29 First Trust Unit 427 Dow Target 10 Mutual Fund	A	Dividend			Exempt
30 First Trust Unit 427 S&P Target 10 Mutual Fund		None	J	T	Exempt
31 First Trust Unit 427 NASDAQ Target 15 Mutual Fund		None			Exempt
32 Finova Group Inc. (formerly, Sirrom Cap. Corp.) (Common Stock)	A	Dividend			Exempt
33 General Motors Corp. (Common Stock)		None	J	T	Exempt
34 GTE Corp. (Common Stock)	A	Dividend			Exempt
<b>1</b> Inc/Val Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Reeves, Danny C.

Date of Report  
08/06/2001

*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

## VIL Page 3 INVESTMENTS and TRUSTS-- income, value, transactions

A Description of Assets (including trust assets)		B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
Place "X" after each asset except from prior disclosure.		(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
							(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-I)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/>	NONE (No reportable income/assets, or transactions.)									
35	Home Depot Inc. (Common Stock)	A	Dividend	J	T	Exempt				
36	Intel Corp. (Common Stock)		None	J	T	Exempt				
37	International Paper (Common Stock)		None	J	T	Exempt				
38	J P Morgan Chase & Co. (Common Stock)		None	J	T	Exempt				
39	LG&E Energy Corp. (Common Stock)	A	Dividend			Exempt				
40	Lucent Technologies, Inc. (Common Stock)	A	Dividend	J	T	Exempt				
41	Morgan Keegan Cash Account		None	J	T	Exempt				
42	Microsoft Corp. (Common Stock)		None	J	T	Exempt				
43	Minnesota Mining & Manufacturing Co. (Common Stock)		None	J	T	Exempt				
44	Network Appliance Inc. (Common Stock)		None	J	T	Exempt				
45	Oracle Systems Corp. (Common Stock)		None	J	T	Exempt				
46	FaineWebber RMA Money Mkt., formerly JC Bradford Money Fnd	A	Interest	J	T	Exempt				
47	Palm Corporation (Common Stock)		None	J	T	Exempt				
48	Philip Morris Cos. Inc. (Common Stock)	A	Dividend	J	T	Exempt				
49	PMC Sierra, Inc. (Common Stock)		None	J	T	Exempt				
50	Qlogic Corp. (Common Stock)		None	J	T	Exempt				
51	Republic Bank Corp. Inc. Class A. (Common Stock)	A	Dividend	J	T	Exempt				
1 <b>Net Gain Codes:</b> A=\$1,001 or less (Col. B, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000		
2 <b>Val Codes:</b> J=\$15,000 or less (Col. C1, D3) O=\$50,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$50,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more		
3 <b>Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) W=Other		S=Assessment W=Estimated		T=Cash/Market				

Name of Person Reporting Reeves, Danny G.		Date of Report 08/06/2001							
FINANCIAL DISCLOSURE REPORT									
VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>									
A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income/assets, or transactions)									
52 RF Micro Devices Inc. (Common Stock)		None	J	T	Exempt				
53 SBC Communications Inc. (Common Stock)		None	J	T	Exempt				
54 Siebel Systems Inc. (Common Stock)		None	J	T	Exempt				
55 3Com Corp. (Common Stock)		None	J	T	Exempt				
56 US Bancorp. (formerly, FirstStar Corp.) - (Common Stock)	A	Dividend	J	T	Exempt				
57 United Parcel Service Inc. (Common Stock)	A	Dividend	J	T	Exempt				
58 Vencor Inc. (Common Stock)		None			Exempt				
59 Ventas Inc. (Common Stock)	A	Dividend	J	T	Exempt				
60 Verizon Communications (GTE Corp.) (Common Stock)	A	Dividend	J	T	Exempt				
61 Worldcom Inc. - Worldcom Group (Common Stock)		None	J	T	Exempt				
62 Worldcom Inc. - MCI Group (Common Stock)		None	J	T	Exempt				
63 XLink Inc. (Common Stock)		None	J	T	Exempt				
64 Smith Barney Appreciation Series A (now, incl. B series)	A	Dividend	K	T	Exempt				
65 Smith Barney Appreciation Series B Mutual Funds	B	Dividend			Exempt				
66 Smith Barney Fundamental Value Series A Mutual Funds	C	Dividend	K	T	Exempt				
67 Smith Barney Fundamental Value Series B Mutual Funds	B	Dividend	J	T	Exempt				
68 Smith Barney Money Funds	A	Interest	J	T	Exempt				
1 Incl/Own Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Reeves, Danny C.		Date of Report 08/06/2001	
<b>VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: Month/Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
NONE (No reportable income/assets, or transactions.)					
69 Van Kampen Focus Port. Unit 136 Pharm. Mutual Fund	B	Dividend			Exempt
70 Van Kampen Focus Port. Unit 136 Telecom. Mutual Fund	B	Dividend			Exempt
71 Van Kampen Focus Port. Unit 150 Banking Series 6 Mutual	B	Dividend			Exempt
72 Vanguard Index Trust 500 Portfolio FD #40 Mutual Fund	A	Dividend	L	T	Exempt
73 Veredus Funds Aggressive Growth Mutual Fund	D	Dividend	K	T	Exempt
74 Kentucky Teacher Retirement System	A	Interest	J	T	Exempt
75 Kentucky Retirement System	A	Interest	J	T	Exempt
76 Principal Capital Value Fund, Inc (A) - Mutual Fund	A	Dividend	J	T	Exempt
77 Principal Capital Value Fund, Inc. (R) - Mutual Fund	A	Dividend	J	T	Exempt
78					
79					
80					
81					
82					
83					
84					
85					
<b>1</b> Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reeves, Danny C.	08/06/2001

# VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Re: Address Information ; current law firm address has been included in lieu of Court address:

Re: Investments & Trusts (Section VII), Items 76 & 77, Principal Capital Value Fund, Inc. (Class A & R), I cannot confirm that dividends were received during 2000 on these retirement fund investments but believe that such dividends were received. If received, the total income earned would be less than \$1,000.

Re: Investments & Trusts (Section VII), Kentucky Teacher Retirement Systems and Kentucky Retirement Systems, I cannot confirm that interest was received during 2000 on these retirement fund investments but believe that such interest was received. If received, the total income earned would be less than \$1,000.

Re: Investments & Trusts (Section VII), Items 64, 65, 66 & 67; Statements from Brokerage companies indicate different values for these investments. The values listed in Section VII reflect the higher values according to Salomon Smith Barney statement. In addition, items listed as "dividends" includes capital gains which were reinvested in the respective fund.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reeves, Danny C.	08/06/2001

# SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	12-31-00	Interest - Greenebaum Doll & McDonald (K-1)	\$913
6	12-31-00	Investment Income - Greenebaum Doll & McDonald (K-1)	\$1,039
7	07-15-01	Interest - Bank One	\$79
8	06-30-01	Self-Employment Earnings - Greenebaum Doll & McDonald, PLLC	\$177,775
9	06-30-01	Interest - Republic Bank	\$1,073
10	07/15/01	Interest - Republic Bank	\$31
11	12-31-99	Fayette County Board of Education	
12	12-31-00	Eastern Kentucky University	
13	06-01-01	Eastern Kentucky University	

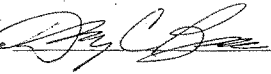
<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Reeves, Danny C.	08/06/2001

**IX. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date



Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks (as of 5/30/01)	36	200	Notes payable to banks-secured		0
U.S. Government securities-add schedule		0	Notes payable to banks-unsecured		0
Listed securities-add schedule (5/31/01)	12	195	Notes payable to relatives		0
Unlisted securities--add schedule (value determined 5/31/01)		0	Notes payable to others		0
Accounts and notes receivable:		0	Accounts and bills due		0
Due from relatives and friends		0	Unpaid income tax		0
Due from others		0	Other unpaid income and interest		0
Doubtful		0	Real estate mortgages payable-add schedule (as of 5/30/01)	180	600
Real estate owned-add schedule (2000 assessed value)	279	900	Chattel mortgages and other liens payable		0
Real estate mortgages receivable		0	Other debts-itemize:		
Autos and other personal property	19	000	a. Auto Lease (as of 5/30/01)	23	670
Cash value-life insurance		0			
Other assets itemize:					
a. Retirement Account (as of 4/30/01)	480	560			
b. Household furnishings and personal property	100	000			
c. Law firm capital account	61	443	Total liabilities	204	270
			Net Worth	785	028
Total Assets	989	298	Total liabilities and net worth	989	298
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosmaker or guarantor		0	Are any assets pledged? (Add schedule) NO		
On leases or contracts		0	Are you defendant in any suits or legal actions? NO		
Legal Claims		0	Have you ever taken bankruptcy? NO		
Provision for Federal Income Tax					
Other special debt		0			



## Attachment to Financial Statement

**Listed Securities**

<u>Stocks</u>	<u>Value</u>
Avaya Inc.	\$ 62.24
Republic Bank (Cl.A)	\$ 9,800.00
Lucent Technologies	\$ 400.50
Cisco Systems, Inc.	\$ 1,932.00

**Real Estate Mortgages Payable**

<u>Banks</u>	<u>Amount</u>
Republic Bank & Trust Co. (Primary)	\$165,600
Republic Bank & Trust Co. (Equity Line)	\$ 15,000

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Response: During the late 1980's I represented a student-athlete (Eric Manuel) on a pro bono basis as a part of the NCAA's investigation of the University of Kentucky's basketball program. I spent several hundred hours in this pro bono representation.

Also during the 1980's I served as a director of the Volunteer Center of the Bluegrass. The Volunteer Center provided volunteer services to a number of groups and agencies throughout Central Kentucky.

Because my areas of practice do not lend themselves to handling litigation matters for the disadvantaged, I have devoted substantial time speaking to various groups and organizations in an effort to assist them in understanding legal issues and concepts. These groups include college and high school students and school administrators. I estimate that I have spent approximately 200 hours each year for at least the past 5 years in connection with these activities.

I have also been active as an officer, board member and league commissioner for the Bluegrass Youth Hockey Association for several years.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Response: I do not belong to any organization that discriminates on the basis of race, sex or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Response: There is not a formal selection commission in my state at this time. After expressing an interest in one of the federal judicial positions in the Eastern District of Kentucky, I was initially contacted by Senator McConnell's office. (Later, I was called by a member of Senator Bunning's staff about my interest in this position.) Senator McConnell's staff arranged for an interview at his offices in Louisville, Kentucky. I understand that several persons who had expressed an interest in this judicial position were also interviewed. Both Senator McConnell's and Senator Bunning's staff participated in the initial interview process. Prior to this interview, I was asked to submit responses to certain questions which were similar to the questions outlined in this questionnaire. Following the interview in Louisville, Kentucky, I was invited to Washington, D.C. to be interviewed by Senator McConnell and Senator Bunning. (This was a joint interview conducted by the both Senators and their general counsel.) Copies of various written materials were forwarded to the Senators' staff prior to this interview. I was later contacted by both Senators and advised that I was being recommended to the President for nomination to fill one of the three judicial vacancies in the Eastern District of Kentucky. Thereafter, I was contacted by staff of the President's counsel and arrangements were made for another interview in Washington with Judge Al Gonzalez. Again, written materials were submitted prior to this interview. Following this interview with Judge Gonzalez, I was contacted by a special agent with the Federal Bureau of Investigation and a formal background check was initiated. I was also interviewed by an FBI Special Agent during the course of the background check. I understand that numerous individuals (judges, neighbors, friends, acquaintances, etc.) were interviewed as a part of the background check. I was subsequently notified by an individual in the White House Counsel's office that I was being nominated on August 2, 2001 for one of the three existing judicial vacancies in the Eastern District of Kentucky.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be

interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

Response: No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this judicial activism have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Response: The federal Constitution establishes three, co-equal branches of government. Federal courts must not attempt to use judicial authority to expand their role into areas reserved to other branches of government or to the states. Federal courts remain courts of *limited jurisdiction*.

At the outset of any case, federal judges have an affirmative obligation to examine jurisdictional prerequisites of standing and ripeness. If those requirements are absent, the case or claim should not proceed.

If these constraints are followed and procedural rules applied in a fair and consistent manner, I believe that many of the criticisms outlined above can be avoided.

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Senator FEINSTEIN. Thank you very much.  
Mr. Rogan?

**STATEMENT OF JAMES E. ROGAN, NOMINEE TO BE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE**

Mr. ROGAN. Madam Chair, my wife, Christine, is here with me. Senator FEINSTEIN. Christine, if you would stand.

Mr. ROGAN. My nine-year-old twin daughters, Dana and Claire, figured they have heard enough of their daddy's speeches to last a lifetime.

[Laughter.]

Mr. ROGAN. I would like to introduce to the Committee also, and I am very pleased to have him join me, the Deputy Secretary of Commerce, Dr. Samuel Bodman, is also here.

[The prepared statement and biographical information of Mr. Rogan follow.]

**STATEMENT OF THE HON. JAMES E. ROGAN, NOMINEE TO BE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE**

Madame Chairman and Members of the Committee:

It is a great honor to join you today as President Bush's nominee for the position of Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. I am grateful to the President for nominating me to this important post, and to Secretary Evans for his recommendation and support.

Madame Chairman, I am especially blessed to be joined by my wife Christine and our young twin daughters, Dana and Claire.

I want to thank Chairman Leahy and you, Madame Chairman, for scheduling this hearing. My gratitude is magnified when I reflect upon the unprecedented and grave issues with which this Committee must grapple following the cowardly attack on our people two months ago.

Madame Chairman, we cannot overstate the importance of intellectual property in today's global economy. For over 200 years American intellectual property has fueled our economic growth and will continue to do so. We need to do all we can on both the domestic and international level to promote and protect this invaluable resource.

The individual confirmed by this body to be Under Secretary of Commerce for Intellectual Property plays a significant role in that effort. Not only does the Under Secretary oversee the issuance of patents and trademarks, but he or she also advises the President, through the Secretary of Commerce, and our Federal agencies, on all national and international intellectual property policy issues. Those issues include the negotiation and implementation of international treaties and improvements to those treaties; review of intellectual property provisions in trade agreements; dispute resolution; and consultation with foreign governments that look to develop or improve their intellectual property systems.

If confirmed, Madame Chairman, my priorities will include working to improve the quality of patents granted and trademarks registered, and to minimize the processing times. USPTO customers deserve a quality product delivered in the shortest possible time. Since that requires substantial human and technical resources, I will work to ensure that USPTO has appropriate funding to do the job. I know the Administration and Congress already are working toward that important goal.

On the international side, we need to continue reaching out to our foreign trading partners to encourage their support for strong intellectual property laws and enforcement systems. U.S. industries suffer enormous losses overseas through piracy and ineffective enforcement.

As the record of this Committee shows, intellectual property-related matters traditionally are addressed in a bipartisan manner. The same holds true for the House Judiciary Committee, where I was privileged to serve during the 105<sup>th</sup> and 106<sup>th</sup> Congresses. If confirmed, I will work diligently to continue that spirit of bipartisanship and cooperation as we deliberate on intellectual property-related policies.

Madame Chairman, we already have the best intellectual property system in the world. If confirmed, I will do all I can to work with your Committee and with my former colleagues in Congress to make it even more effective and cost-efficient.

Again, Madame Chairman, thank you for holding this hearing. I thank this Committee for its consideration of my nomination. I am pleased to answer any questions.

**JAMES E. ROGAN**  
**Biographical Data**

1. Name: James Edward Rogan
2. Nominated for the position of Undersecretary of Commerce for Intellectual Property and Director of the Patent and Trademark Office
3. Addresses  
  
Home: 4268 South 35<sup>th</sup> Street  
Arlington, Virginia 22206  
Office: Venable Law Firm, 1201 New York Ave, N.W., Suite 1000,  
Washington, D.C. 20005
3. Born San Francisco, California, August 21, 1957
4. Married to the former Christine Ann Apffel (homemaker)
5. Education:  
  
UCLA School of Law  
1979 – 1983  
Awarded Juris Doctor Degree  
  
University of California at Berkeley  
1977 – 1979  
Awarded Bachelor of Arts Degree  
  
Chabot Community College (now Las Positas Community College)  
Livermore, California  
1975 – 1977  
Awarded Associate of Arts Degree
6. Employment Record: see Exhibit A
7. Military Service: Not Applicable
8. Honors and Awards: Like most public officials, I have been given a variety of awards, certificates and trophies. Most have been in the area of taxpayer rights (e.g., “Watchdog of the Treasury”) or protecting government programs for senior citizens (e.g., “Medicare Lifesaver Award”). I am unaware of any that would be of interest to the Committee, or would be relevant to the position to which I have been nominated.



JAMES E. ROGAN

Page Two

9. Bar and Legal Associations (dates are estimated)

Association of Deputy District Attorneys, 1985 – 1990  
California District Attorney's Association, 1985 – 1990  
California Judges Association, 1990 – 1994

11. Other Memberships

I am unaware of any memberships I have that are active in lobbying before public bodies. In fact, I join very few organizations. The only active membership I currently hold that I can recall is my annual membership for several decades in the American Political Items Collectors.

12. Court Admission

- a. California State Bar, admitted in 1984
- b. United States District Court, Central and Southern District of California, admitted in 1984

13. Published Speeches and Writings

As a public servant for almost 17 years, serving as a prosecutor, judge, state legislator, Majority Leader of the California State Assembly, and Member of Congress, I have been the subject of or mentioned in innumerable thousands of articles. Similarly, I have delivered thousands of speeches before town hall meetings, service clubs, schools, and every conceivable type of organization. I have been called upon to prepare and deliver constituent reports, Sacramento and Washington updates, letters to the editor.

To provide the Committee with a comprehensive list of what is available would require a Lexis-Nexis search and the delivery of thousands of pages. I do not have access to this service; I presume the Committee can request this from the Library of Congress if the Members of the Committee wish to peruse such voluminous documents. Similarly, a search of the Congressional Record will provide the Members and staff of the Committee all of my remarks and speeches delivered in the House of Representatives.

Almost all of my press clippings from my years in public service are not at my disposal. Many were lost over the years. The ones I kept tended to deal with election results, President Clinton's impeachment, biographical, and human-interest stories. None of these appear to be relevant to the position for which I have been nominated.

JAMES E. ROGAN

Page Three

Most of my speeches are delivered extemporaneously, or with a few notes jotted down on scraps of paper. I retain very few of these examples. Usually the only formally prepared remarks I have used have been in conjunction with my service in Congress.

14. Health: Excellent. Last physical examination was December 2000.

15. Public Office

Member of Congress, 1997 – 2001

Member of the California State Assembly, 1994 – 1996

Judge of the Municipal Court, State of California, 1990 – 1994

Deputy District Attorney, Los Angeles County, 1985 – 1990

16. Legal Career

I have not tried a case since I was a criminal prosecutor almost a dozen years ago, with the exception of the impeachment trial of President Bill Clinton before the United States Senate in 1999. As to the other trials, I do not have current access to any of those records. Other than the impeachment trial, every case I tried was during my tenure as a Deputy District Attorney for Los Angeles County.

I assume the remaining questions are applicable to judicial nominations and/or Justice Department positions, and not to the Director of the Patent and Trademark Office.

17. Litigation: See answer to Question 16, supra.

18. Legal Activities: See answer to Question 16, supra.

JAMES E. ROGAN  
Financial Data and Conflict of Interest

1. Financial Data

I have no stocks, bonds, or deferred income arrangements. I am owed royalties from Pinnacle List Rental Company in Arlington, Virginia for donor list rental income in the amount of approximately \$40,000. This payment will be sent to me by the vendor upon receipt of royalties from those companies that have rented the list.

2. Conflict of Interest: See attached Ethics Agreement I executed for the Department of Commerce

3. Outside Employment: None contemplated beyond (perhaps) a part-time teaching position at a law school in the future.

4. Income: See attached financial disclosure form

5. Net Worth Statement: See attached

6. Previous Campaigns

Other than my own campaigns, I have been a volunteer on scores of political campaigns for both Republican and Democratic nominees for office dating back to when I was ten years of age. I have not had a paid position, or any official consulting position, on a political campaign.

JAMES E. ROGAN  
General Questions

1. Pro Bono Work

As a government employee for over 16 years I did no “pro bono” practice of the law. I believe I was legally precluded from such work. I returned to the private sector two months ago as a lawyer in a Washington law firm. I have provided no pro bono services to date. I am not admitted to the Washington, D.C. bar and am in the process of applying for membership.

2. Boy Scouts of America, Troop 137, Cobra Patrol, Pacifica, California, 1967 – 1968 (rank of “Tenderfoot”)

**Employment History of James Edward Rogan  
(Post Higher Education)**

1983 - 1985	Lillick McHose and Charles 707 Wilshire Blvd., 43rd Floor Los Angeles, California [Attorney]
1985 - 1990	Los Angeles County District Attorney's Office [Deputy District Attorney]
1987 - 1994	Southwestern University School of Law 675 South Westmoreland Avenue Los Angeles, California [Adjunct Professor of Trial Advocacy]
1987 - 1994	Glendale University College of Law 220 North Glendale Avenue Glendale, California [Adjunct Professor of Criminal Law]
1990 - 1994	Judge of the Municipal Court [Now the Superior Court] Glendale Judicial District 600 East Broadway Glendale, California [Municipal Court Judge; Presiding Judge 1993 - 1994]
1993 - 1994	Glendale Community College 1500 North Verdugo Road Glendale, California [Adjunct Professor of Criminal Justice]
1994 - 1996	Assemblyman California State Legislator State Capitol Sacramento, California [Majority Leader of the Assembly, 1995 – 1996]
1995	Adams Duque Hazeltine Los Angeles, California [Of Counsel]
1997 - 2001	Member of Congress, 27 <sup>th</sup> District of California House of Representatives Washington, D.C.

**Employment History of James Edward Rogan**  
Page Two

2001 – Present	Venable, Baetjer, Howard and Civiletti 1201 New York Avenue, N.W. Suite 1000 Washington, D.C. 20005 [Attorney]
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James E. Rogan  
Additional Biographical Material

**6. Employment Record:**

*Venable, Baetjer, Howard and Civiletti*, 1201 New York Ave., N.W. Suite 1000, Washington, D.C., (202) 513-4620, March 2001 to Present, Attorney/Partner.  
*United States House of Representatives*, Washington, D.C., January 1977 - January 2001, United States Congressman.  
*State of California, California State Assembly*, State Capitol, Sacramento, CA, June 1994 - December 1998, State Legislator.  
*State of California, Glendale Courthouse*, 500 East Broadway, Glendale, CA, December 1990 - May 1994, State Court Judge.  
*County of Los Angeles, District Attorney*, 300 East Walnut Street, Pasadena, CA, April 1985 - December 1990, Deputy District Attorney.  
*Southwestern University School of Law*, 675 South Westmoreland Avenue, Los Angeles, CA 1987 - 1994, Adjunct Professor.  
*Glendale College of Law*, 220 North Glendale Blvd, Glendale, CA. 1987 - 1994, Adjunct Professor.  
*Glendale Community College*, 1550 North Verdugo road, Glendale, CA. 1993 - 1994, Adjunct Professor.  
*Adams Dugue Hazeltine*, Los Angeles, CA. 1995, Attorney of Counsel.

**8. Honors and Awards:**

Those items with an (\*) indicate that while they were received, they have not yet been reconfirmed for the purposes of this listing. Once those have been reconfirmed, a revised list will be forwarded.

Americans for Tax Reform, *Hero of the Taxpayer*, 2000  
 Americans for Tax Reform, *Friend of the Taxpayer*, 1999  
 Americans for Tax Reform, *Friend of the Taxpayer*, 1998  
 Americans for Tax Reform, *Friend of the Taxpayer*, 1997  
 Associated Builders & Contractors, *Champion of the Merit Shop*, 106<sup>th</sup> Congress  
 Associated Builders & Contractors, *Champion of the Merit Shop*, 105<sup>th</sup> Congress  
 California Journal Magazine, *#1 Legislator in Integrity, #1 Legislator in Effectiveness*, 1996  
 California Lawyer Magazine, *One of California's Most Effective Prosecutors*, 1990  
 \*Citizens Against Government Waste, *Taxpayer's Hero Award*, 1998  
 \*Citizens Against Government Waste, *Taxpayer's Hero Award*, 1997  
 Citizens for a Sound Economy, *Jefferson Award*, 106<sup>th</sup> Congress  
 Citizens for a Sound Economy, *Jefferson Award*, 105<sup>th</sup> Congress  
 Claremont Institute, *Henry Salvatori Award*, 2001

**James E. Rogan**  
Biographical Data Cont.

\*Coalition to Save Medicare

**\*Food Distribution Industry, Thomas Jefferson Award**

Law Enforcement Alliance, *Legislator of the Year*, 1999

National Association of Manufacturers, *Legislative Excellence Award*, 106<sup>th</sup> Congress

National Association of Manufacturers, *Legislative Excellence Award*, 105<sup>th</sup> Congress

National Federation of Independent Business, *Guardian of Small Business*, 106<sup>th</sup> Congress

National Federation of Independent Business, *Guardian of Small Business*, 105<sup>th</sup> Congress

National Federation of Independent Business, *Guardian of Small Business*, 1996

National Rifle Association, *Defender of Freedom*, 1996

National Rifle Association, California Chapter, Patriot Award, 1994

**\*60+ Association, Super Friend of Seniors, 2000**

**\*60+ Association, Super Friend of Seniors, 1998**

**\*United Seniors Association, Pro-Senior Tax Cut Award, 2000**

**\*United Seniors Association, Pro-Senior Tax Cut Award, 1998**

**\*U.S. Border Control's Honor Roll, 1998**

U.S. Chamber of Commerce, *Spirit of Enterprise Award*, 2000

U.S. Chamber of Commerce, *Spirit of Enterprise Award*, 1999

U.S. Chamber of Commerce, *Spirit of Enterprise Award*, 1998

U.S. Chamber of Commerce, *Spirit of Enterprise Award*, 1997

**\*Watchdog of the Treasury, Golden Bulldog Award**

9. **Bar and Legal Associations** (dates are estimated)

Member, Municipal Court Judges Associations;

Member, State Bar of California; admitted in 1984

Association of Deputy District Attorneys, 1985 – 1990

California District Attorney's Association, 1985 – 1990

California Judges Association, 1990 – 1994

11. **Other Memberships:**

Member, American Political Items Collectors; for several decades

Member, Sons of the Desert



**James E. Rogan**  
**Biographical Data Cont.**

**12. Court Admission:**

- a. California State Bar, admitted in 1984
- b. United States Court of Appeals, 9<sup>th</sup> District, June 1984.
- c. United States District Court, Northern District, June 1984.
- d. United States District Court, Central District, June 1984.

**13. Published Speeches and Writings:** Will be provided separately.

**16. Legal Career:**

I have not tried a case since I was criminal prosecutor over ten years ago, with the exception of the impeachment trial of President Bill Clinton before the United States Senate in 1999.

As a Judge of the Municipal Court of the State of California from 1990 - 1994, I handled both civil and criminal cases in direct calendaring system, with responsibility for all aspects of civil and criminal litigation.

Prior to my appointment to the bench, I served as Deputy District Attorney for Los Angeles County for almost six years. I specialized in the prosecution of gang murder cases as a member of the Hardcore Gang Unit. I handled major felony trials throughout my career as a prosecutor. I was the lead prosecutor of a five-member team specially assigned to the Lamb Funeral Home case, which was featured on innumerable national news and talk shows. I spent slightly more than one year in a civil law firm prior to becoming a prosecutor. In addition during time I regularly appeared in court as a prosecutor on virtually a daily basis, except when engaged in trial preparation on specially assigned murder cases.

**17. Litigation:** The following is a list of my ten most significantly litigated cases I have handled as a prosecutor.

**1. People v. David Sconce, Laurianne Scone and Jerry Sconce**  
**Case Number 573819**

This case has been covered by the world press, including Germany, England and Japan. The defendants ran a fourth-generation Pasadena funeral parlor from which they allegedly conducted a grizzly, secret business of stealing organs and gold filled teeth from corpses

**James E. Rogan**  
**Biographical Data Cont.**

and selling them. The defendants would then attempt to “set records” as to how many of these mutilated corpses they could stuff in the cremation ovens, then commingle the ashes. Further the defendant David Sconce allegedly murdered a competitor, as well as solicited the murders of his maternal grand-parents, a potential competitor in the funeral industry, and the former Deputy District Attorney who prosecuted him during the preliminary hearing. Further the defendant David Sconce paid money to have three business competitors savagely beaten, which was carried out. Defendant David Sconce recently completed a prison term for over twenty felonies; all three defendants still face numerous other charges, ranging from embezzlement, bribery of a witness, conspiracy to commit murder, forgery, and other offenses. This case is still pending.

Judge: Honorable Terry Smerling, Los Angeles County Superior Court  
 Counsel for the Defense: Thomas Nishi, Esq., 606 South Olive Street, Suite 1410,  
 Los Angeles, CA 90014  
 Edward Rucker, Esq., 490 South Fair Oaks Avenue, Pasadena, CA 91101

**2. People v. William Kilpatrick Conway**  
**Case Number 593564**

Two young mothers took their three children for an evening summer walk. They were standing on an island at an intersection waiting for the traffic signal to change and permit them to cross the street in a residential neighborhood. A car driven by defendant, who had just left a bar after drinking eleven beers, was speeding southbound at 80 miles per hour approaching the intersection. Defendant lost control of his automobile and drove it up on the island, striking and killing both women and two of the three children. It was the worst traffic fatality in Glendale’s history. Defendant was convicted on all counts of gross vehicular manslaughter while intoxicated. My closing argument in this case was featured in the national “Trial Excellence” lawyer’s magazine.

Judge : Honorable Carol Fieldhouse, Los Angeles County Superior Court  
 Defense Counsel: Mike Allensworth, Office of the Public Defender, Los Angeles, CA

**3. People v. Harles Earl Hamilton**  
**Case Number 567284**

Defendant was charged with burglary of a residence, and the robbery and murder of two elderly victims (one victim was the form president of the Pasadena Bar Association). With defendant’s confession suppressed, this case was a “circumstantial

**James E. Rogan**  
**Biographical Data Cont.**

evidence' case which was tried four separate times, with each trial resulting in a hung jury (the most favorable result was 11-1 for guilty).

Judge: Honorable Coleman A. Swart, Los Angeles County Superior Court  
 Judge: honorable George Xanthos, Los Angeles County Superior Court  
 Counsel for the Defense: Rayford Fountain, 49 South Baldwin, Sierra Madre, CA 91024  
 Counsel for the Defense: William Turner, Esq., P.O. Box 40076, Pasadena, CA 91104

**4. People v. Gerardo Rodriguez**  
**Case Number 568149**

Gang murder drive-by shooting case. Defendant convicted of first degree murder.

Judge: Honorable Irwin Garfinkel, Los Angeles County Superior Court  
 Counsel for the Defense: Cynthia K. Cohan, Esq., 12301 Wilshire Blvd., Suite 550  
 Los Angeles, CA 90025

**5. People v. Reuben Salazar**  
**Case Number 765127**

Gang murder drive-by shooting case. Defendant convicted of first degree murder.

Judge: Honorable Carol Fieldhouse, Los Angeles County Superior Court  
 Counsel for the Defense: Frank Sanzo, Esq., Valenzuela and Sanzo, 922 South Atlantic,  
 Los Angeles, CA 90022

**6. People v. Steve Valdez**  
**Case Number 764990**

Gang murder case. Defendant convicted of first degree murder.

Judge: Honorable Gabriel Gutierrez, Los Angeles County Superior Court  
 Counsel for the Defense: Irene Anthony, Esq., Address unavailable through the California  
 State Bar.

**James E. Rogan**  
**Biographical Data Cont.**

7. **People v. Yobani Luna**  
**Case Number 568888**

Gang shooting. Victim seriously wounded. Defendant convicted of attempted murder.

Judge: Honorable Irwin Garfinkel, Los Angeles County Superior Court  
Counsel for the Defense: Cynthia K. Cohan, Esq., 12301 Wilshire Blvd., Suite 550, Los Angeles, CA 90025

8. **People v. Yung Duk Green**  
**Case Number 591147**

Defendant a member of an armed robbery gang. Defendant convicted of armed robbery.

Judge: Honorable Gilbert C. Alston, Los Angeles County Superior Court  
Counsel for the Defense: Steven Lewin, Esq., 6922 Hollywood Blvd., Suite 201, Hollywood, CA 90028

9. **People v. Deon Daniels**  
**Case Number 304420**

Defendant was a gang member engaged in a series of random drive-by shootings at citizens. Fortunately, no victims were wounded. Defendant convicted of assault with a deadly weapon.

Judge: Honorable Irwin Garfinkel, Los Angeles County Superior Court  
Counsel for the Defense: Wade Olson, Esq., 1231 South Garfield Avenue, Alhambra, CA 91801

10. **People v. Sergio Quinonez**  
**Case Number 592989**

Defendant owned a tire business in downtown Los Angeles, from which he operated an extensive heroin trafficking business. Defendant convicted of sale of heroin.

Judge: Honorable Jacqueline Connor, Los Angeles County Superior Court  
Counsel for the Defense: Arthur Leone, Esq., Office of the public Defender, 300 East Walnut Street, Pasadena, CA 91101

**James E. Rogan**  
**Biographical Data Cont.**

**18. Legal Activities:**

Appointed by Governor George Deukmejian to the Glendale Municipal court (succeeding the late Chinryl Krott) on November 28, 1990 – where I served until May 1994. As a judge I handled both civil and criminal cases with responsibility for all aspect of civil and criminal litigation.

Prior to my appointment to the bench, I served as a Deputy District Attorney for the County of Los Angeles for almost six years (April 1985 - December 1990), Deputy District Attorney. I specialized in the prosecution of gang murder cases and major felony trials as a member of the hardcore Gang Unit.

Prior to joining the District Attorney's office in early 1985, I was a civil litigator with the firm of Lillick McHose and Charles (now Pillsbury Madison and Sutro) in Los Angeles. I worked in the area of personal injury and maritime litigation. I spent almost 1-1/2 years at Lillick before leaving the firm (at a substantial pay cut) to join the District Attorney's office as a prosecutor.

Senator FEINSTEIN. Thank you very much. Thanks very much, Mr. Rogan.

I am going to begin with one question to ask the entire panel, and if you would just answer it, we will just go right down the table, of course, with the exception of Mr. Rogan, who is not required to answer these questions. The question is, in your opinion, how strongly do you believe judges should bind themselves on the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?

Judge ROBINSON. Madam Chairperson, I believe that judges, it is their sworn duty to be bound by the doctrine of stare decisis and to be bound by those courts who sit in positions relative to their court by which their precedent would be binding.

Senator FEINSTEIN. Thank you very much.

Mr. HEATON. I agree, Senator. There may be some difference in the circumstance for Supreme Court Justices, but certainly for those of us who seek to be on the District bench, we are bound to follow the decisions of the higher appellate courts and I would certainly do that.

Senator FEINSTEIN. Thank you.

Mr. LAND. Madam Chair, I also agree that trial judges should be bound by prior precedent in their circuit and of the Supreme Court and do accept and understand the doctrine of stare decisis.

Senator FEINSTEIN. Thank you.

Judge MARTONE. Madam Chairperson, I agree. I think the doctrine of stare decisis is an important component of the rule of law itself. I think every judge takes an oath to support that.

Senator FEINSTEIN. Thank you.

Mr. REEVES. I would certainly agree with the comments that have been expressed previously and understand the importance of stare decisis, especially at the District Court level.

Senator FEINSTEIN. Thank you very much.

I am sure that you followed the debate here in Capitol Hill, and, in fact, across the country, about the need for legislation to address the risk of more terrorist attacks. Without getting into any specific proposals, what do you think the trade-offs—this is an interesting question—what do you think the trade-offs need to be between liberty and security? Please, Judge Robinson?

Judge ROBINSON. Madam Chairperson, I do not know that I can be specific in my answer. The Supreme Court has given us direction in terms of our liberty interests under the United States Constitution and those should be foremost in our mind. But at the same time, our country is facing a serious problem. I do think that is something that would have to be answered in the context of a case that has been prosecuted or indicted under a particular statute and the language of that statute.

Senator FEINSTEIN. Thanks very much.

Mr. Heaton?

Mr. HEATON. I agree with that, Senator. I certainly appreciate the need for us to strike the appropriate balance in making sure that our responses to the security threats to the country do not undercut our civil liberties or cause us to lose our commitment to those. Certainly as a District judge, if I am confirmed, I would approach any issue that might come before me of that sort from the

presumption that an act of Congress is constitutional but would apply the accepted constitutional norms to evaluate that in a particular case.

Senator FEINSTEIN. Thanks very much.

Mr. Land?

Mr. LAND. Madam Chair, this body and Congress has that awesome responsibility, I believe, of balancing those different interests. As a judge, I believe that if I were to be confirmed, my job would be to try to determine the most analogous precedent that exists under the doctrine of *stare decisis* and apply it to any law that is applied. I do not believe the judge should be making the law in that area, but the judge's job would be to interpret what this body and what Congress does in that area and should follow precedent that is closely analogous to what would be before the judge and try to follow in that way.

Senator FEINSTEIN. Thanks very much, Mr. Land. Justice?

Judge MARTONE. Madam Chairperson, liberty and security are two sides of the same coin and it goes back to really political science in terms of how we order society. You cannot have liberty without order and you cannot have order without liberty. And I agree with what has been said, that it really is up to bodies like this to properly reflect the will of the American people in terms of striking the appropriate balance at any given moment in history.

Senator FEINSTEIN. Thank you.

Mr. REEVES. Again, I certainly agree with all the comments that have been made by the other nominees and would agree certainly to evaluate any liberty interest under the legislation that has been passed.

Senator FEINSTEIN. Thanks very much. I appreciate it.

Now after those softball questions, I am going to turn to a very tough questioner and really observe seniority. Senator Kyl?

Senator KYL. Thank you, Senator Feinstein. I might add that Senator McConnell has seniority in his tenure in the Senate, but by the Committee process, I got on this Committee first, and that might clear up a little bit of confusion for those of you who are aware of his longer service here in the Senate.

Rather than ask a question, I am going to make a brief statement, primarily for the benefit of those of you who are in the audience who care about one or more of the nominees who are at the table here.

This hearing should be viewed as literally the tip of the iceberg. All of the work that has gone into the President's decision on who to nominate for these important positions, the Committee staff, all of these people, primarily younger people sitting behind us, have spent a great deal of time going over all of the material that has been submitted in the applications and from the White House and Justice Department relative to the nominations here. The American Bar Association has done its evaluation of the nominees, and other groups that may have an interest have submitted to us.

So by the time we get to the hearing, in fact, the mere scheduling of the hearing itself is a recognition in almost every case that the candidate is ready to move forward, that nobody has a problem with that. Now, there are a few rare exceptions to that, and, in

fact, the hearings that you have seen on television or read about, perhaps, are those rare exceptions where there is a real question about a particular nominee and all of the Senators gather around and we really have a good old knock down, drag out questioning period with tough questions and debate and then we reach our conclusion and have a vote, however that might come out.

But for most of the nominees, the genius of our process here is that the President does a great deal of vetting. He communicates with the Senators from the State and then the process in the Committee here advances in the same way so that by the time we get to this hearing, all of the tough questions have been asked and the cream rises to the top. These are the very best, and so the chances are we do not need to ask a lot of tough questions. You have already seen from Senator Feinstein's questions, every one of these nominees knows exactly why they are here, what the law is, and how they will apply it.

So if you were expecting a huge crowd of Senators here or a long hearing, a lot of questions and that kind of thing, the reason you are not seeing it is because you are here in support of a very qualified candidate who we have already figured out is very qualified. In that sense, this is part of the process that we have to go through, but you should not view it as one in which we are trying to trip anybody up.

All of these people are supremely qualified, and I just want you to know that the fact that we may be able to conclude this hearing in a relatively quick form and without a great deal of fireworks does not suggest a lack of interest on our part, but rather the degree to which these nominees have already been found to be highly qualified. So that is my statement without a question.

Senator FEINSTEIN. Thank you, Senator Kyl, very much.

Senator McConnell?

Senator MCCONNELL. Senator Feinstein, let me also echo what Senator Kyl has said. Congratulations to all of you for having run the gauntlet and having gotten to this stage. The inquisition is really not necessary at this point. You have all been through that at a prior stage and I want to congratulate you all for having gotten to this point, particularly, of course, Danny Reeves, the President's nominee from Kentucky. I am proud of your record over the years which has earned this appointment and we fully anticipate that you will be an outstanding District Judge in the Eastern District of Kentucky.

Mr. REEVES. Thank you, Senator, very much.

Senator KYL. [Presiding.] I might say that the vote that was scheduled for 11:15 has now commenced and Senator Hatch and Senator Feinstein will go vote. I plan to stay here, and then when they come back, I will go vote and they will continue to chair the meeting.

Senator McConnell, did you have anything else at this point?

Senator MCCONNELL. No, I do not think so, Senator Kyl.

Senator KYL. Senator Brownback?

Senator BROWNBACK. Thank you very much, Senator Kyl.

I want to put forward a statement, as well, because of the nature of the questioning that has already been conducted in a great deal of thoroughness with all the background checks that have been



done on each of you and the vetting that each of you have gone through.

The position that you will hopefully soon attain, and you will, I think is one of the most important ones within our government. You hold decisions over people's lives that are a very personal and a very real impact. My wish for each of you is just for wisdom in being able to do these in a way that is right for the people involved in the litigation and right for the people that are impacted by the broad swath of the decision that you make, and a lot of these decisions will move on up the tree, whether it is appellate court or Supreme Court and shape, then, our land in a non-legislative way, in many regards, and yet we retain for the legislative vehicle to really be the one to change our land.

So you have an enormous impact directly on the people's lives that you are going to be involved with in the litigation and indirectly through the laws that you help shape that we pass here.

I hope that none of you ever get stale in the job. A number of you are younger. I still consider myself in that category, as well. To be on the bench for a lifetime, I hope you will be, I hope that 50 years from now when you are still deciding cases that you will walk into that same courtroom with the same zest and yearning to do the right thing that I know you will enter into it right now. There is a tendency, I think, for some us, after a while, we get used to it and think, well, it is not that big of a deal, but it is a big deal and it really touches people's lives and souls in a very key way.

This is one of the most important positions that we put people into in the Federal Government, one of the most important positions in government outside of a county commissioner. I guess I always think they touch people's lives about as much as anybody does, as well.

But all the best to each of you and to your families in going through this and the sacrifices that you will have in our land in making these tough calls and interpreting the laws and their impact on people. My wish is just all for the best for each of you. God-speed.

Senator KYL. Thank you, Senator Brownback.

There are a couple of questions I would like to ask. One is a more practical question, perhaps. Given the fact that a lot of our courts are not fully staffed, and even with your accession to the bench will continue not to be fully staffed, and we are seeing increasing caseloads, some of you have already served as judges, but a general question for any of you who would like to volunteer and answer first. Given the inevitability of increasing caseloads and yet the need to do justice, do you have any specific ideas or experience in handling cases, in handling your caseload in such a way as to provide perhaps suggestions to others or to give us an idea of how you will manage that difficult balancing act. Is there anybody who would like to volunteer for that?

Mr. REEVES. Senator Kyl, I will go first, if that is appropriate.

Senator KYL. Sure.

Mr. REEVES. As a practitioner now for nearly 18 years, I have observed in Federal Court, in particular, that the judges who take control of cases early, understand the cases, and use the civil rules and the other rules that are available, are able to manage their

dockets a little better. The Federal Rules of Civil Procedure certainly give us an opportunity to do that, with Rule 16 and with other rules for conducting hearings and scheduling conferences early, and I would hope that if my nomination is confirmed that I would certainly be able to do that and to take charge and take control early in the process.

Senator KYL. As a fellow litigator who had the same frustrations sometimes, I appreciate that answer. Thank you.

Mr. Heaton?

Mr. HEATON. Senator, in the Western District of Oklahoma, in addition to that, which I certainly agree with, ten or 15 years ago, we had precisely the experience that you have described of substantial caseloads and so on, and as a result, our district became very aggressive in its use of alternative dispute resolution techniques in making sure that the various opportunities for settlement were at least fully explored with the parties. I do not think that is something that should necessarily supplant the litigation process, but it is an available option, and I think as a part of the early intervention by the Court, those are options that can help to move cases along quickly.

Senator KYL. I appreciate that. Do any others want to add something, or I will move on to another question.

I have always been fascinated, of course, when you a District Judge, as all of you have said, you follow the Supreme Court precedents, but occasionally there is something that we like, at least some lawyers will characterize as a case of first impression. Sometimes they are not really. But if you see a case that at least appears to you to be a case of first impression, how then do you approach that in terms of precedents of the Supreme Court, general rules of construction, and so on? What is your philosophy about approaching a case with constitutional aspects that at least appears to be a case of first impression? Again, I will just ask the question generally for anybody who would like to address it. Justice Martone?

Judge MARTONE. Well, I think one would first look to the text, and if the text is clear or if you think it is clear, then that should be the end of the inquiry. If a consideration of the text leads to an absurd result, then it might take you down a different avenue.

If consideration of the text is insufficient to produce a sensible answer to the question, then one would look at the context in which the statute exists, the statute taken as a whole, try to get a feel for what the legislative purpose was articulated either in that particular statute or the chapter of which it is a part, look to what precedents may exist to give sort of guidances to at least what the general framework of analysis is.

And then in the end, apply reason and common sense to see if reason and common sense can ultimately have an influence and come to bear on a resolution that makes sense.

Senator KYL. Any other—

Judge ROBINSON. I agree fully with what Justice Martone said. The only other thing I would add is that if it does have constitutional implications, and I am assuming we are talking about statutory construction, the canon that you begin with a presumption that the statute is constitutional is a very important one.

Senator KYL. As a legislator, I appreciate that.

Let me ask you a question about judicial temperament. One of the things that is difficult for us to measure objectively when we read the resumes and we get the reports from folks is just what kind of judicial temperament a candidate will have, and that is not always easy to measure. But in the interviews that are conducted about each of you, one of the questions that is asked is, how about this matter of judicial temperament, how they will treat litigants who come before them in the court, how they will deal with colleagues and so on, a very important matter in the qualifications of a judge.

It is an open-ended thought or question, but do any of you have any thoughts or advice to others about how to approach this question of judicial temperament in order to do your job, pressing the lawyers, for example, as Mr. Reeves said, within the bounds of the law, but doing it in a way that enhances the respect for the bench?

Mr. LAND. Mr. Chairman, I will try that one. I think that a judge not only needs to be fair and unbiased but he needs to have the appearance of being fair and unbiased. I think that he needs to present himself in a way on the bench to where the litigants feel that the judge is fair and unbiased, and I think that means being courteous. I think it means being respectful and understanding that every person there in the courtroom has a job to do.

I think that those things can be done while maintaining the decorum and order in the courtroom. But I think that the judge needs to demonstrate that type of demeanor so that every person that has come before that judge realizes that the judge, regardless of the final decision, has been fair and has been unbiased in deciding the particular case.

Senator KYL. The rule of law that Justice Martone referred to earlier is such a basic component of our society as a whole. If people accept a decision even though it may be counter to their interests, that enhances the rule of law. Today, there are so many young people coming before the court on criminal charges, many of them who are—well, in fact, in my own State of Arizona, many who came from another country very recently, maybe legally, maybe not legally, and so you end up with a lot of cross-currents in terms of the kind of people who appear before you as a judge.

I wonder if any of you have any thought about how you maintain the temperament in that situation in a way as to maybe even perhaps influence that young person's life for the better, though he or she stands before you accused of a crime. That is an additional challenge that the judge really bears heavily in our society today, it seems to me. Any thoughts about how you assume that extra responsibility, I guess we will put it that way? Mr. Heaton?

Mr. HEATON. Senator, I think the answer is essentially what was just described to us, and that is that we need to be mindful of the need to even-handedly and fairly deal with everybody in the courtroom, regardless of their circumstances or the job that they are there to play, because that ultimately does contribute greatly to the public confidence in what we are doing and public confidence in the judicial system.

Senator KYL. I think especially with a lot of these young people appearing before you, what they think when they leave that court-

room, wherever they are going, is very, very important for the future of our country.

Just one final question. We are talking here about the Federal District Court and most of you had experience in the State Court system in one way or another. We are very desirous of protecting that proper relationship between the Federal Government and the States, and as a Federal District judge, obviously your primary responsibility is dealing with Federal statutes, but I know the Federal judiciary frequently complains about Congress federalizing more and more and more in terms of the legal requirements.

Do you have any thoughts about this proper balance between the Federal and the State and how, as a Federal District judge, you would deal with some of the conflicts that come about, where you may have a State Court case and a Federal Court case, for example, or particular State interests but you are dealing with a Federal statute. Any general thoughts on that from any of you?

Judge MARTONE. Senator Kyl, let me at least begin by saying that in Arizona, and I think in most States and in most circuits, there are State Federal Judicial Councils consisting of Federal judges and State judges who meet together, go over areas of common concern that exist between and among the various courts. Ours meets twice a year. We have addressed such things as capital case litigation, trial conflicts between the State and Federal Courts, the disruptive effect of bankruptcy stays on proceedings in the State trial court, and it has been absolutely marvelous in terms of the coordination and communication that goes on and now exists between the State and Federal judges in the State.

Senator KYL. Thank you. I appreciate that, and I presume other States have that same kind of coordination. I would hope that they do.

Senator Feinstein had some questions, and since she will be back here in just a moment, let me just maybe refer to one or two of them, so I will ask these questions on her behalf.

Mr. Land, she was going to ask you this question. Noting your legal experience focusing on civil matters, most notably insurance litigation, she asks, if you are confirmed, how you respond to the challenge of handling the criminal matters that will be before you, and particularly she also wondered what led you to sponsor a bill in 1996 to create a Civil Justice Reform Commission and what you learned as Chairman of that commission.

Mr. LAND. Thank you, Mr. Chairman. First of all, with regard to the first part of the question regarding my criminal litigation experience or lack thereof, you are correct that my practice has been primarily in the civil litigation area, but I have had exposure to the criminal justice system and those issues, having served in the Senate Judiciary Committee during the entire time that I was in the Georgia General Assembly. Ninety-five percent of the litigation, or the legislation that affected the criminal justice system came through our Committee and, therefore, I did have exposure to analyzing those issues, those proposed statutes, how they were affected by our Constitution, and those types of things. So I have had some exposure as a member of the Senate Judiciary Committee.

Second, I was also chairperson of the Georgia Indigent Defense Council, which is an agency in Georgia that provides—is a mecha-

nism for providing funding for indigent defendants who are accused of crime and it also provides certain guidelines, minimum guidelines for providing criminal defense for indigents. In that capacity, I have had exposure to those types of issues involving our criminal justice system, so I think I do have some exposure to those issues.

Thirdly, although not presumptuous but as a matter of preparation for hopefully being confirmed, I have taken it upon myself with a law professor who is now an associate dean at the University of Georgia Law School who has provided me with a couple of good treatises on Federal criminal procedure and I have taken it upon myself to try to review those. The law professor said that the worst thing that could happen is, if you are not confirmed, at least you will have learned a little something.

[Laughter.]

Mr. LAND. So I have done those things with regard to trying to get up to speed in the area of the criminal side of the equation, understanding that my experience has been on the civil side.

With regard to the question about the Civil Justice Reform Act that I sponsored in 1996 and, in fact, it was a bipartisan piece of legislation, there were cries in the State of Georgia, as there are in Congress, I am sure, about our civil justice system and whether there are any improvements that should be made.

There were a number of legislators on both sides of the aisle in the State of Georgia who felt that in order for us to make decisions that were that important, we needed information, and in order for us to find that information, we needed to establish a commission or the civil justice—this was a Civil Justice Improvement Commission, I think, to analyze those issues, and we did that. Although the General Assembly was Democratic at the time, the Lieutenant Governor at that time appointed me as chair to look into that. It was a broad bipartisan effort.

We held hearings and tried to determine an analysis of our civil justice system in Georgia, and what we basically concluded was we did not have a data collection system that could give us the information we needed to make good decisions. So the ultimate recommendation of our commission was to establish a data collection system that would allow us to obtain the necessary data from the courthouse, from the filing to the end result with verdicts and those types of things so that we could look and see what our system was rather than making decisions solely for maybe political reasons but base it on fact, and that is what we ended up doing.

I am proud to say that I subsequently sponsored the bill to establish that data collection system and it has made its way through the legislative process and we are starting now to collect better data so that legislators can make those decisions. I am long-winded and I apologize.

Senator KYL. No, I will just ask you to repeat everything you just said for Senator Feinstein. I have to run to vote now, Senator Feinstein. Thank you.

Senator FEINSTEIN. [Presiding.] Thank you very much, Senator Kyl. I appreciate it.

Senator McConnell, do you have questions?

Senator MCCONNELL. I do not, Senator Feinstein, at least until I hear what you might have to ask.

Senator FEINSTEIN. All right. If I may, then, Mr. Heaton, I have got a couple of questions for you. Among a number of your actions in the Oklahoma legislature, you voted against tabling a bill that sought to ban all post-viability abortions except to save the life of a woman. You also voted for a bill that would require a young woman to wait 48 hours after a parent had been notified that she is seeking abortion services. Could you explain the rationale for these votes?

Mr. HEATON. Well, Senator, I frankly do not remember the specifics of those bills. There has been a fair amount of water under the bridge since I cast those votes. I would just say that, in general, I certainly recognize that *Roe v. Wade* is the law of the land, as it has been modified in the *Casey* and other decisions, and if I am fortunate enough to be confirmed, I certainly would follow those decisions. There is nothing in my personal viewpoint that would preclude me from following the law as articulated in those decisions.

Senator FEINSTEIN. I see. Thank you. That is very helpful. I appreciate that.

Mr. Reeves, hello.

Mr. REEVES. Hi.

Senator FEINSTEIN. If I may, in *Griswold v. Connecticut*, the Supreme Court for the first time recognized the constitutional right to privacy. It went on to reaffirm and expand this right in *Eisenstat v. Baird*. Following these decisions, the Supreme Court then recognized a constitutional protection for a woman's right to choose in *Roe v. Wade*, as you well know. Do you support and believe in a constitutional right to privacy?

Mr. REEVES. I certainly recognize the Supreme Court cases and the cases in my circuit that have recognized a right to privacy. As the other nominees have said, I would certainly apply and enforce those decisions.

Senator FEINSTEIN. So how would you quantify your understanding of the constitutional right to privacy?

Mr. REEVES. Well, as you indicated, I think the first case you mentioned was the contraceptive case, the *Griswold* decision, which clearly has been enforced and should not be in any doubt at this point, as well as subsequent decisions that recognize a right to privacy, not only for contraceptive issues but the right to choose, as Mr. Heaton had indicated in *Roe v. Wade* and the *Casey* decision and the other cases that have followed. That provides the contours of the right to privacy that has been recognized.

Senator FEINSTEIN. One more question, if I may. In your 1993 brief for the case of *Horner v. Kentucky High Schools Athletic Association*, you mentioned Congressional intent a number of times. For example, you state that, and I quote, "Simply because Congress may have intended to broaden the coverage of Title IX does not invalidate the approach used in the *Kleczek* court determining whether an entity is a recipient for Title IX purposes."

You also wrote that, quote, "While the Kentucky High School Athletic Association does not dispute that Congress may have intended to provide broader coverage to Title IX, it does not follow that the Kentucky High School Athletic Association is subject or has violated its provisions via its actions."

What degree of investigation into Congressional or legislative intent do you think Federal judges have a duty to pursue?

Mr. REEVES. Well, certainly if there is an ambiguity or if there is some question, for example, in the case that you mentioned, the *Horner* case, the whole issue of the programmatic approach that was discussed in the *Kleczek* case from Rhode Island was really an open issue at that time. There had only been a couple of cases that had really discussed that issue. And under those circumstances, when there is such an open issue, such an open question, and we are really not sure, then I think it is certainly appropriate to look at what the legislature intended.

Senator FEINSTEIN. As a Federal judge, how would you give deference to legislative intent?

Mr. REEVES. Well, certainly the cases have helped us determine when that would occur, especially some of the recent cases where we look at congruence and proportionality when we are examining a statute under the 14th Amendment, Section 5, and that is certainly important. But it is the court's analysis that really has to take place. The court has to examine those issues and to reach the right decision based upon the precedent.

Senator FEINSTEIN. Thank you very much.

Senator McConnell, any questions?

Senator MCCONNELL. Let me just point out that in the case to which Senator Feinstein was just referring, you were representing your client, were you not, the Kentucky High School Athletic Association?

Mr. REEVES. Absolutely.

Senator MCCONNELL. and arguing as best you could on behalf of your client the various points you thought might apply.

Mr. REEVES. Certainly.

Senator MCCONNELL. But, in fact, you have no hostility to Title IX, I—

Mr. REEVES. Oh, none whatsoever. As a matter of fact, I have and do speak frequently on those issues. I volunteer a lot of time to discussions among various school groups, boards of education, booster clubs—

Senator MCCONNELL. Trying to help them understand how to comply with Title IX, is that correct?

Mr. REEVES. Yes, exactly.

Senator MCCONNELL. Thank you.

Senator FEINSTEIN. Senator Hatch, you are up.

#### **STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. We are happy to welcome all of you to the Committee. I am sorry I have been so pressured today I have not been able to be here for most of this hearing. We have been working on the Job Protection Act, the stimulus package, and a whole raft of other things, as well.

But I know each and every one of you and I just want to tell you that we are very proud that you have been nominated to these positions. These are important positions, among the most important in our whole society, and we are grateful that you are willing to

make the sacrifices and that you are so well qualified to be able to fulfill these positions.

So we are grateful to have you all here. I do not have any questions. I think I know enough about each of you to be a strong supporter. That is all I care to say. We wish you the best and we will do everything we can to get you through as soon as we can.

Senator FEINSTEIN. Thanks very much, Senator.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

It is both an honor and a pleasure to be here this morning with six extremely well-qualified nominees for important positions in the Federal Judiciary and the department of Commerce. I congratulate all of you on being selected by President Bush to serve in high office. After reviewing your distinguished records, I have no doubt that you will do great service for the citizens of this country upon confirmation.

First, our judicial nominees. Joe Heaton is a native Oklahoman with an outstanding record of legal experience and public service. After graduating from the University of Oklahoma College of Law—where he was Order of the Coif—he maintained a general civil practice with an emphasis in business and commercial matters. For eight years, Mr. Heaton served as a member of the Oklahoma House of Representatives, including several years as Minority Leader. Then in 1996, Mr. Heaton began serving in his current position as the First Assistant U.S. Attorney for the Western District of Oklahoma, where he has earned a good reputation while handling a wide variety of legal matters.

Clay D. Land, our Nominee for the Middle District of Georgia, brings to the bench extensive legal experience gained from a career blending private practice and public service. After graduating *cum laude* from the University of Georgia law school in 1985, Mr. Land returned to his home town of Columbus, Georgia, where he has maintained a general civil practice. In 1993, he served as chairman of the Georgia Indigent Defense Council, which is charged with the responsibility of overseeing the funding and implementation of indigent criminal defense programs in the state. From 1993 to 1994, he served on the Columbus City Council, where he was a strong advocate for anti-drug programs in poor neighborhoods, and led the effort to provide transportation for disadvantaged children to attend Saturday tutorial programs. And from 1995 to 2000, he served as a Georgia state senator, where he was a member of the Judiciary Committee.

Today's nominee for the District of Arizona is no stranger to the bench. Justice Frederick J. Martone currently serves on the Supreme Court of Arizona. Justice Martone was educated further East; he graduated from Holy Cross College, from the Notre Dame Law School, and earned an LL.M. from the Harvard Law School.

Danny C. Reeves is our nominee for the federal bench in the Eastern District of Kentucky. He began his legal career as a law clerk for then-district Judge Eugene Siler, who now sits on the Sixth Circuit. Mr. Reeves then joined the Lexington office of Greenebaum, Doll & McDonald, where he rose to the rank of partner in 1988. Despite his busy legal career, he has served as a director of the Volunteer Center of the Bluegrass, the Kentucky Museum of Natural History, and the Bluegrass Youth Hockey Association.

Julie A. Robinson, today's nominee for the District of Kansas, graduated from the University of Kansas School of Law and then went to work as a law clerk to the Chief Bankruptcy Judge for the District of Kansas. She must have liked the clerkship—for the last six years, she has been sitting as a Bankruptcy Judge on that very same court, and also currently serves as a Judge on the Tenth Circuit bankruptcy Appellate Panel. In between, Judge Robinson gained a wealth of both criminal and civil experience as an Assistant U.S. Attorney in the District of Kansas.

Now, I'll turn to our Administration nominee. James E. Rogan has been nominated to serve as Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office at the Department of Commerce. The position of Undersecretary for Intellectual Property is an exceptionally important position, being the Administration's primary intellectual property policy maker, and overseeing the Patent and Trademark Office in its mission of serving and protecting American innovators and businesses plays a crucial role in keeping America on the leading edge of technology and competitive in the global marketplace. I am pleased that the President has nominated Mr. Rogan, and that Mr. Rogan has chosen to



serve, in these important roles. In his service in the House of Representatives, he became familiar with many of the issues he will face in this new role.

The pace of American innovation is continuing to increase. Consequently, the Patent and Trademark Office faces daunting challenges as it seeks to improve the quality and efficiency of its work while the volume of that work continues to climb in an era of increasing technological complexity. Many of the issues the patent office faces—retention of good examiners, good databases to support the issuance of quality patents in complex areas such as biotech patents, business methods, or other developing areas, harnessing technology for a more user-friendly and convenient interface through electronic filing—these and many other issues require resources to be addressed adequately.

The resources that support the Patent and Trademark Office come entirely from user-fees have been siphoned off to serve other governmental purposes. This is a practice that I have worked against together with Chairman Leahy over the years. We agree that it ought to stop, and the fees collected from American innovators be used to serve them better so that their work can benefit all of us and our economy. Mr. Rogan is perhaps uniquely qualified among nominees to this office to address this issue, to raise the visibility of intellectual property issues, generally, and to help lead the way into a new era of innovation through the protection of the intellectual property rights of Americans. I look forward to seeing him confirmed soon and working with him on these important issues.

Again, it is a great pleasure to welcome all of you to the Committee. I look forward to this hearing, and to working with the Chair, with Chairman Leahy, and with others to make sure the Committee and the full Senate hold timely votes on your nominations.

Senator FEINSTEIN. If any of the other judicial candidates wishes to address the Committee in any way, please do so now. Otherwise, I am going to dismiss this panel and we will go to Mr. Rogan.

[No response.]

Senator FEINSTEIN. If not, then thank you very much for being here. We appreciate it.

As you are leaving, if people can do so reasonably quietly, I would like to welcome former Congressman James Rogan. Jim is a fourth generation San Franciscan now nominated to head the United States Patent and Trademark Office. Congressman Rogan arrives at this nomination after a very long and diverse career, from a high school dropout to a member of the House of Representatives, from stacking tires and scrubbing toilets to prosecuting the impeachment trial of a President on the floor of the United States Senate.

He did not come from the easiest of backgrounds, but Jim Rogan put himself through UC-Berkeley and then UCLA Law School. Later, he prosecuted gang murders in Los Angeles. He was named by California Lawyer magazine as one of the State's most effective prosecutors for his work. He was subsequently appointed by Governor George Deukmajian to the Glendale Municipal Court as California's youngest sitting judge, and at age 35, he was unanimously elected by his colleagues as the court's presiding judge.

Mr. Rogan then ran for and won a special election to the California State Assembly, where he was unanimously elected during his freshman term to serve as the first Republican majority leader in almost 30 years. In 1996, he won the first of two consecutive terms to the United States Congress, where he served on the House Judiciary Committee, including time as a member of the Intellectual Property Subcommittee of that Committee, a position that will serve him well in his new capacity, should he be confirmed.

Many Americans now know Mr. Rogan only as one of the House prosecutors in the Senate trial, but his years of service to the peo-

ple of California show him to be much more than that, and I warmly welcome him before this Committee today.

Mr. ROGAN. Madam Chairman, thank you so much for that wonderful introduction. Of all those qualities that you have articulated, the one that you left out is that I never showed the incredibly poor judgment of running for the U.S. Senate against you.

[Laughter.]

Mr. ROGAN. As you ponder my nomination, I hope you will keep that in the back of your mind.

[Laughter.]

Mr. ROGAN. Thank you. Thank you for that introduction.

Senator FEINSTEIN. Thank you. Senator Hatch?

Senator HATCH. Welcome to the Committee, Mr. Rogan.

Mr. ROGAN. Thank you, Senator.

Senator HATCH. We have a great deal of respect for you. This position happens to be one of the most important positions in government. Of course, it is basically administering something that even the Constitution recognizes as that important.

The intellectual property that you will be supervising is one of our real balance of trade surpluses and it is important that we handle it correctly, that we do it right, and that we set an example for the rest of the world. In many cases, we do have piracy of intellectual property that really should not exist in a civilized world. The countries that do that basically are going to have a difficult time really coming into this century the way they should.

But I will not go through all of the incredibly important things about your appointment and your background. We all know you. We have respect for you. You are a person of integrity, a person who stands up for what he believes. To me, that is very important and I particularly appreciate you and your family willing to make this sacrifice and to do these things to help you serve in this position.

The Patent and Trademark Office faces daunting challenges as it seeks to improve the quality and the efficiency of its work while the volume of that work continues to climb in an era of increasing technological complexity. Many of the issues the Patent Office faces—retention of good examiners, good databases to support the issuance of quality patents in complex areas, such as biotech patents, business methods, or other developing areas, and harnessing technology for a more user-friendly and convenient interface through electronic filing. These and many other issues require resources in order to address them properly.

The resources that support the Patent and Trademark Office come entirely from user fees, but a large portion of those user fees have been siphoned off to serve other governmental purposes. Now, this is the practice that I have worked against, together with Chairman Leahy, over the years. We agreed that it ought to stop, and that the fees collected from American innovators ought to be used to serve them better so that their work can benefit all of us and our economy.

I believe you, Congressman Rogan, are uniquely qualified, among nominees to this office, to address this issue, to raise the visibility of the intellectual property issues generally, which is important,

and to help lead the way into a new era of innovation through the protection of the intellectual property rights of all Americans.

I look forward to seeing you confirmed soon and I look forward to working with you on these important issues. So, it is a great pleasure to have you here. I am very proud of you and we will do everything we can to assist the Chairman and others in getting you through the Senate as soon as possible.

Mr. ROGAN. Senator, thank you. I had the privilege during my tenure in Congress to work with you and Senator Leahy and members of this Committee on that very issue which you addressed, the diversion of funds. I cannot tell you how the administration is going to come down on the subject. What I can tell you is that the administration is committed to ensuring, one way or another, that the U.S. PTO has the appropriate funds to do the job, so that as you so rightly said, the examining board, the examining members would be able to do the job and help move us into the 21st century.

Senator HATCH. Thank you.

Senator FEINSTEIN. I am going to ask you, if I may, one question along those lines. The Patent and Trademark Office has reported that in 2000, patent applications were up 12 percent over the prior year. Trademark applications were up 27 percent. The number of issued patents increased by 15 percent, and issued trademark registrations was up 21 percent. They expect that the rate of increase will continue, and it is now taking about 14 months to process a patent application and six months to process a trademark registration request.

How do you intend to address that situation, which some have characterized as an impending crisis? I know you will be new to the job, but I would be very curious if you have any thoughts on that.

Mr. ROGAN. Madam Chairman, I think the first thing that the next director should do is view it exactly as you just said, an impending crisis. In fact, the information I have seen from the Commerce Department and from the Patent and Trademark Office paints even a more bleaker picture than what you have just described. I think the average pendency right now is about two-and-a-half years, and by 2006, they expect that pendency rate to go to about three-and-a-half years. That makes it very, very difficult for entrepreneurs, for investors, and for particularly those that are investing resources in high-tech patents to basically sit and wait to see if their investment is going to pay off.

In a large way, we are a victim of our technological successes, because as we move to more high-tech patents, the examination process becomes far more complex. I read of one patent that was sent over to the U.S. PTO with background materials that filled up 12 disks that would be the equivalent of six million pages of supporting material.

These are very, very technical issues, and on top of that, we have run into the problem of losing a very highly trained examination core to the private sector. Whoever has the privilege of being confirmed by this body to that position is going to have to work very hard, first, to see that we have the resources to hire and to retain qualified examiners and also to find ways that we can give them

more flexibility in reviewing the materials that they have to go through so that we can turn out a quality product.

Senator FEINSTEIN. So, of course, your position as a former House member would put you in a rather unique position to do the necessary lobbying for the funds you might require for your staff.

Mr. ROGAN. Yes and no, Madam Chairman. I think had I never served in the House, I would perhaps approach the job with the illusion that it would be easy to talk to appropriators to give up their power.

[Laughter.]

Mr. ROGAN. That is a double-edged sword.

Senator FEINSTEIN. Thanks very much.

Senator Hatch, do you have any questions for Mr. Rogan?

Senator HATCH. I know Mr. Rogan very, very well, and frankly, I do not have any questions for him. We have chatted about these areas and I have every confidence that he is going to do a great job and we are going to help him.

I appreciate you, Madam Chairman, and your fairness on this Committee. I think you have been a pillar of decency on the Judiciary Committee during good times and bad and it has always meant a lot to me.

Senator FEINSTEIN. Thank you.

Senator HATCH. But I fully and strongly support Mr. Rogan. I believe he will be one of the greatest heads of this Department who has ever sat there, and I am counting on him being there because I take a tremendous interest, as do Senator Leahy and other members of this Committee, in all the intellectual property issues because we think that is where an awful lot of where we are going in this country really is, and in the world.

Mr. ROGAN. Thank you, Senator.

Senator HATCH. It is extremely important that we have good people there, and I consider you very highly qualified for this job, one of the best to ever be nominated for it. So I am grateful to be with you and I am grateful to support you.

Mr. ROGAN. One lesson I have learned in politics is quit while you are ahead, and I do not think I will add anything else.

Senator HATCH. I think you have shown a number of lessons here today in some of your comments. I particularly enjoyed those ones about Senator Feinstein.

[Laughter.]

Mr. ROGAN. Senator Hatch, I do not know if you were there for the initial introduction, but I want to assure everybody that when I sent my biographical materials over to the chairwoman's office, it was no accident that I put in that I am a fourth generation San Franciscan.

[Laughter.]

Senator HATCH. Will you stop at nothing?

[Laughter.]

Senator FEINSTEIN. You are very good on the uptake today.

Senator HATCH. Thank you. We are grateful to have you serving, grateful for your wife and family, and we will be there with you.

Mr. ROGAN. Thank you, Senator.

Senator FEINSTEIN. Thanks very much, Jim.

Mr. ROGAN. Thank you, Madam Chairman.

Senator FEINSTEIN. Much of the best, and thank you, ladies and gentlemen, for bearing with us during this morning's hearing. The candidate is excused.

Before I adjourn, we will keep the record open for one week, until the close of business on November 14, for written questions. Thank you all. The hearing is adjourned.

[Whereupon, at 11:54 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

#### QUESTIONS AND ANSWERS

##### **Responses of Joe L. Heaton to questions submitted by Senator Leahy**

*Question 1:* Please state whether you have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes", please provide the relevant dates of arrest, charge, and disposition and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* Throughout your legal career, you have served in both legislative and executive capacities and at both the state and federal level—first as a member of the Oklahoma House of Representatives and now as First Assistant U.S. Attorney in the Western District of Oklahoma. What perspective have these experiences given you on the relationship between the federal judiciary and the states? Between the judicial and executive branches of the federal government?

*Answer:* These varied experiences have given me a heightened appreciation for the separate roles played by the various branches and levels of government and for the importance of respecting the functions and prerogatives of each branch. These experiences should help to keep me mindful of the proper limits of judicial power, including the need to defer to the policy judgments of the legislative branch so long as constitutional standards are met. I believe the diffusion of power in our government, including the separation of powers doctrine and the federal system, is important to the preservation of our freedoms. I would be conscious of the need to maintain the appropriate balance between branches and levels of government, in accordance with the standards articulated by the higher courts.

*Question 3:* As you know, the role of legislator and federal judge are very different. As a state lawmaker, you weigh policy concerns, your own personal ideology, and even politics in writing bills and voting on proposed legislation. As a federal judge, you are charged with a far different task: decide a case or controversy based on the facts in front of you and apply the controlling legal authority without regard to your own personal views.

*Answer:* I am in complete agreement with this statement.

*Question 4:* Press reports indicate that in 1990, as a state legislator, you opposed a bill that would provide a private cause of action to any individual who had been intimidated or harassed by hate groups because of his race or their religion. Many of your colleagues apparently supported the legislation because they felt it would provide compensation to people who had been injured by such hurtful behavior and would drive hate groups out of business.

Do you believe that civil causes of action against private citizens or groups are appropriate tools for enforcing individuals constitutional and civil rights?

Do you believe that as a district judge you would have any problem fairly adjudicating claim such as the one contemplated by this legislation?

*Answer:* My view is that private rights of action are one of several tools which might be appropriately employed to provide an enforcement mechanism for constitutional, civil or other rights. As a policy matter, whether a private cause of action is the appropriate remedy for a particular class of rights or in a particular set of circumstances would depend on any number of factors, including the effectiveness of criminal enforcement or the existence of some other statutory enforcement scheme. Once a legislature has made a judgment on these factors, I am confident I could, if confirmed, fairly adjudicate a claim based on a statute or legislation like that described in the question or any other duly enacted legislation. I do not recall

the specific basis for my vote on the bill alluded to, but assume my objection would have been based on preferring other means of attacking hate crimes. I had earlier supported legislation imposing criminal penalties for intimidating or harassing others on the basis of race, religion and other factors.

*Question 5:* In 1989, in *Texas v. Johnson*, 491 U.S. 397 (1989), the United States Supreme Court held that the First Amendment does not allow states to criminally prosecute people who burn American flags as a political protest. The Court said that, "IMP there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Johnson*, 491 U.S. at 414. Immediately following the ruling, you called the Supreme Court's decision "out of whack" and advocated for a state resolution urging Congress to propose a constitutional amendment banning flag desecration. (Source: Ron Jenkins, *Lawmakers Ponder Proposed Flag-Burning Amendment*, *Tulsa World*, July 2, 1989, at A2.)

Do you continue to adhere to this characterization of the Supreme Court's opinion that the majority was "out of whack?"

Do you believe that flag burning is a form of political expression, which, no matter how offensive we might find it, is protected by the Constitution's free speech guarantees?

Would you have any difficulties adhering to the letter and the spirit of this decision if it provided controlling legal authority in a case before you?

*Answer:* In light of the decision in *Johnson*, the law is clear that flag burning is a form of political expression protected by the Constitution's free speech guarantees and I would certainly have no difficulty in applying that rule and standard in any case coming before me. My earlier characterization of the Supreme Court decision as a legislative policy matter would have no bearing on my rulings if confirmed as a district judge.

I recognize the critical, central role of free speech (including expressive conduct) in our constitutional scheme and in our society generally, and would have no difficulty in adhering to the letter and spirit of the controlling authorities in this area.

*Question 6:* Also during your tenure in the Oklahoma state legislature, you advocated for a bill that would require death sentences to be carried out within 60 days of a court's decision in a prisoner's last appeal unless a court or the Governor granted a stay.

As you may know, since 1973, 98 people in 22 states have been released from death row after evidence of their innocence was discovered. While some of these cases were in the federal habeas process, many were on appeal in state court. In a recent high profile case, prisoners were exonerated after journalism undergraduates—not lawyers or even law students—uncovered exculpatory evidence. In light of these disturbing statistics, do you continue to support such a legislative proposal?

What role, if any, do you believe a federal district court judge plays in balancing a criminal defendant's right to a full and fair trial, especially in capital cases, and the state's interest in punishing the convicted in an expeditious manner?

*Answer:* My recollection is that the referenced bill would have applied only if direct appeals and collateral review had been exhausted. It was designed to assure that if arguable grounds for stay of the judgment existed at that point, they be actively pursued either by presentation to a court or to the Governor rather than allowing indefinite delay in execution of the sentence.

Any instance of the wrongful conviction of an individual is disturbing. That is particularly so in capital cases. Given the obvious difference between the death penalty and other types of punishment, the Supreme Court has in various ways required heightened reliability in the adjudicative process leading to a death sentence. Moreover, Congress and state legislatures are uniquely qualified to consider other means by which DNA evidence or other facts for determining a defendant's guilt or innocence are available during trial and post-conviction proceedings. In light of governing precedent and statutes, I believe it is appropriate for me to defer to legislative judgment on these matters. If confirmed as a nominee to the federal bench, I would take very seriously the need to assure a full and fair trial through rigorous application of all applicable constitutional and statutory procedures.

*Question 7:* During your career as a state legislator, you were a strong proponent of right-to-work legislation and supported a number of legislative initiatives that would make it more difficult for workers to secure basic protections from their employers.

How will you set aside these views in your capacity as a district court judge if matters involving federal labor laws or workers' rights come before you?

*Answer:* I don't view my legislative record as one of denying basic protections to workers. However, regardless of how a particular legislative initiative might be

characterized, the fundamental answer to the question is the same in this area as in others: I recognize that a judge's job is to put aside personal policy preferences or personal ideology, to decide the cases on the basis of the facts in the case before him or her, and to apply the controlling legal authority without regard to his or her personal views. I am committed to that principle and will follow it in matters involving federal labor laws or workers rights, as well as in any other area of the law.

*Question 8:* While you were serving in the state legislature, you said that "Goldwater was my original hero, later supplanted by Reagan." [Source: Jim Meyers, New House GOP Leader a Fast Mover, Tulsa World, Jan.17,1989, at A1.] Now that you have been nominated to serve as a federal judge, who do you consider your judicial hero and why?

*Answer:* I don't know that I have thought of him as a "hero" but, since reading many of his opinions in law school, I have greatly admired former Supreme Court Justice John M. Harlan as a model of what a good appellate judge should be. His opinions seemed to me to consistently reflect excellence in the judicial craft—mastery of the record, incisive analysis and discussion of the legal issues involved in the case, and clear explanation of his decision and the basis for it. His opinions tended to stay focused on the specific issues raised by the case before the court and avoid dicta. His opinions also reflected respect for the principle of separation of powers and for the federal system, as well as the limitations inherent in being a judge rather than a policymaker.

*Question 9:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental area, granting states significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* The determination of the outer limits of Congressional power in various areas has always been difficult and I recognize that the Supreme Court has struck down several significant acts of Congress in recent years. In evaluating the constitutionality of any legislation which might come before me as a District Judge, I would start from the presumption that an Act of Congress is a constitutional exercise of legislative power. In determining whether there was a basis for overcoming that presumption, I would be bound by and apply the applicable constitutional tests as set out by the higher appellate courts.

*Question 10:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* My general understanding of applicable precedent is that Congress has the power to abrogate a state's sovereign immunity where it unequivocally expresses the intent to do so and where it acts pursuant to a valid grant of constitutional authority. *Kimel v. Florida Bd of Regents*, 528 U.S. 62 at 73 (2000). Section 5 of the Fourteenth Amendment potentially provides such a grant of power. *Kimel* at 80. Congress' power to enforce the Amendment's protections against discrimination extends to prohibiting a "broader swath of conduct" than that proscribed by the Amendment itself. *Board of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, at 363 (2001). Whether particular legislation is a permissible exercise of this power depends on whether the legislation exhibits "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne v. Flores*, 521 U.S. 507 at 520 (1997). *Garrett* and other cases address the question of how the "congruence and proportionality" standard would be applied. Whether an enforcement scheme involving a private right of action for discrimination could theoretically meet this standard would have to be evaluated under the constitutional tests set forth in *Garrett* and other cases.

*Question 11:* If Congress provides money to a state on condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing the funds?

*Answer:* The Supreme Court has held Congress may, in the exercise of its spending power, grant funds to States on condition that the States take some action which Congress could not directly require them to take. *South Dakota v. Dole*, 483 U.S. 203 (1987). This would appear to include a condition that the States voluntarily waive their immunity to suit, although there is some suggestion in the cases that the financial inducement offered by Congress could conceivably be so coercive as to undercut the voluntariness of the waiver of immunity. *College Savings Bank v. Florida Prepaid Post secondary Education Expense Board*, 527 U.S. 666 (1999); *Dole*, supra, at 211. The specific condition addressed in the question would have to, be evaluated in the context of a specific case raising the issue.

*Question 12:* Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* I am unaware of any such statutes or sections. As noted previously, I would, if confirmed, apply the presumption of constitutionality to all acts of Congress.

*Question 13:* Are there any federal statutes or sections thereof that go beyond Congress' enumerated powers under the Constitution?

*Answer:* I am unaware of any such statutes or sections. As noted previously, I would, if confirmed, apply the presumption of constitutionality to all acts of Congress.

#### Responses of Clay D. Land to questions submitted by Senator Leahy

*Question 1:* Please state whether you, have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination., other than a minor traffic violation, that is reflected in a record available to the public, If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation. report prepared on. me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* In response to a question about "Judicial activism" in your questionnaire, you wrote that "Judges should interpret the law based upon their discernment of the drafters' intent." If confirmed, as a judge what factors would you consider in discerning legislative intent?

*Answer:* First, one should look at the plain' language of the statute. If that language is unclear, then a review of other cases interpreting the provision in question may be helpful. General rules of statutory construction may also aid in the interpretation of legislative intent. Finally, legislative history of the provision in question may aid in the interpretation of the statute.

*Question 3:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted by the Commerce Clause. These cases have been described as creating a new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, granting states' significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* Judges should exercise restraint understanding their proper role in our system of government. In deciding the constitutionality of a statute, judges should approach their inquiry with a presumption of constitutionality and a genuine respect for the constitutional role assigned to the other two branches of government. In deciding cases under the Commerce Clause and under Section 5 of the Fourteenth Amendment as a federal district court judge, I would be bound to follow the legal precedent set by the United States Supreme Court and the United States Circuit Court of Appeals for my circuit.



*Question 4:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* If confirmed, I would be bound by the legal precedents set by the United States Supreme Court and the United States Circuit Court of Appeals for my circuit. It is my understanding that under the current state of the law, Congress can address the sovereign immunity issue by offering federal funds in exchange for a waiver of sovereign immunity (*South Dakota vs. Dole*, 483 U.S. 203 (1987)) and/or by enacting legislation under Section 5 of the Fourteenth Amendment to remedy or prevent constitutional violations. It is my understanding that the Supreme Court has stated that for this type legislation under Section 5 of the Fourteenth Amendment, there needs to be a "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." (*City of Boerne vs. Flores*, 521 U.S. 507, 520 (1997)). The Supreme Court has further expanded on the application of this standard in subsequent cases. See *Kimel vs. Florida Bd. of Regents*, 528 U.S. 62 (2000)) and *Bd. of Trustees of the Univ. of Alabama vs. Garrett*, 531 U.S. 955 (2001)). If I am confirmed, I would be required to apply the standard set forth by the Supreme Court to the individual case before me.

*Question 5:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing funds?

*Answer:* It is my general understanding that Congress may induce states to consent to suit by offering them federal funding in exchange for the state's waiver of immunity. *South Dakota vs. Dole*, 483 U.S. 203 (1987). However, the Supreme Court has also explained that Congress' power to place conditions on funding is not unlimited. Id. If confirmed, I would apply the governing precedent in this area, as well as Supreme Court precedent regarding abrogation of state sovereign immunity cited above in response to question 4. I would also approach an inquiry as to a statute's constitutionality with the presumption that Acts of Congress are constitutional.

*Question 6:* Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* Not that I am presently aware of. If confirmed, I would approach any inquiry as to the constitutionality of an Act of Congress with a presumption as to its constitutionality.

*Question 7:* Are there any federal statutes or sections thereof that go beyond, Congress' enumerated powers under the Constitution?

*Answer:* I am presently unaware of any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that go beyond Congress' enumerated powers under the Constitution. The Supreme Court has ruled in previously decided cases that there are limits on Congress' Commerce Power. See *United States vs. Lopez*, 514 U.S. 549 (1995). If confirmed, I would be bound by the precedents established by the Supreme Court and the Circuit Court of Appeals for my Circuit. When confronted with a constitutional question, I would also approach the constitutional inquiry with a presumption as to the constitutionality of the statute in question.

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#### **Responses of Frederick J. Martone to questions submitted by Senator Leahy**

*Question 1:* Please state whether you have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes" please provide the relevant date of arrest, charge, and disposition and their describe the particulars of the offense.

I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI investigation report prepared background on me, I respectfully direct your attentions to that report, for a response to this question.

*Question 2:* You have extensive experience on the bench in Arizona, and I believe your record on the state Superior and Supreme Courts is commendable. What are

the most important lessons you learned in these positions that are relevant to service on the federal district court?

*Answer:* A judge must be patient and consider the views of others, but also must be decisive and have the moral courage to make difficult decisions. A judge should be mindful that even though we are doing serious work, we should not take ourselves too seriously. A judge, must be diligent but flexible. With experience; one can grow in wisdom. A judge should be prompt and not fear reversal. In our aspiration for justice, fairness and common sense count for much.

*Question 3:* As you may know, I support enacting legislation to reform the death penalty as it applied in this country. Since 1973, 98 people in 22 states have been released from death row with evidence of their innocence. Many of these cases were on appeal in state court, others were in the federal habeas process. Some prisoners were exonerated after journalism undergraduates—not lawyers or even law students—uncovered exculpatory evidence.

*Answer:* In 1995 you gave a speech at a symposium sponsored by the Goldwater Institute and the Federalist Society. In it, you discussed the slow pace of capital litigation from state courts to federal habeas review. You, said, “it’s scandalous for (the Arizona Supreme Court) to be reviewing cases that are eighteen and twenty years old.” You continued, “it raises the question that if we can’t do it any better than that, consistent with fundamental fairness, then maybe we shouldn’t be doing it at all.”

Please explain what you meant in the above-quoted statement.

By the quoted sentences, I meant to suggest that back in 1995 our court was considering cases in which the time elapsed between the offense and the carrying out of the sentence (18–20 years) was nearly a generation. I was suggesting that we needed to examine ways in which we could reduce unnecessary delay without compromising fundamental fairness or the rights of the defendant. In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (AEDPA), P.L. 104–132, to address these issues. If further adjustments are necessary, Congress is especially equipped to make additional amendments to the federal habeas provisions. I would be bound by any such enactments and the decisions of the Supreme Court construing them.

*Question 4:* What role, if any, do you believe a federal district court judge plays in balancing a criminal defendant’s right to a full and fair trial—especially in capital cases—against the state’s interest in punishing the convicted in an expeditious manner?

*Answer:* An effective trial judge can properly balance the interests of both sides to a capital case. The trial judge has an obligation to ensure that the defendant has a full and fair trial and sufficient time and resources to mount an appropriate defense at both the guilt and penalty phase of, a capital case. If the government is going to seek the death penalty, then it must ensure that the system has the proper resources, including competent; defense counsel, investigators, and expert witnesses, to ensure a full and fair proceeding. The trial court can also be sensitive to the needs of victims of crime and treat them with dignity and respect. Legitimate delays in the processing of a case should be explained to them so they will understand that the case is proceeding in a fair way.

*Question 5:* In 1995, you observed that perhaps the time had come to abandon diversity jurisdiction in the U.S. District Courts. You quoted others as calling diversity jurisdiction “a federal social program that subsidizes otherwise well-financed non-federal litigation.” You said that state courts would not be greatly burdened by absorbing the litigation of diversity cases then in the U.S. District Courts. Is this an opinion that you still hold? Would you elaborate on this view?

*Answer:* Federal diversity jurisdiction had its origin in the understanding that at one time in America it was thought that state courts might have difficulty in being fair to out-of-state litigants. While that may have been true at one time in America, it does not comport with my own experience as a lawyer or judge in Arizona. As a lawyer, I selected a federal forum, not because of fear of local prejudice, but for other tactical reasons. As a judge, I have never seen or had a case in which anyone ever suggested unfairness as a result of the state residency of a litigant. Of course, I acknowledge the existence of diversity jurisdiction and its constitutional basis, and would protect and respect its exercise as an Article III judge.

*Question 6:* In the past few years, the Supreme court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress’s power under Section 5 of the Fourteenth Amendment. The Supreme court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal

authority is being diminished. At the same time, the Court has issued several decisions most notably in the environmental arena, granting states' significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* All legislation is presumed to be constitutional. The governing precedents in this area include *City of Boerne v. P.F. Flores*, 521 U.S. 507, 117 S. Ct. 2157 (1997) and *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624 (1995). Under *Boerne*, Congress has the power to enforce the provisions of the Fourteenth Amendment, where there is congruence and proportionality between the injury to be prevented and the means adopted to that end. Under *Lopez*, Congress has the power to regulate the use of the channels of interstate commerce, the instrumentalities of interstate commerce persons or things in interstate commerce, and activities having a substantial effect on interstate commerce. I would be bound to follow precedent established by the Supreme Court.

*Question 7:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* *Board of Trustees of the University of Alabama v. Garrett*, —U.S.—, 121 S. Ct. 955 (2001), *Kimel v. Floresda Board of Recents*, 528 U.S. 62, 120 S. Ct. 631 (2000), and *City of Bourne v. Flores*, 521 U.S. 501–7, 117 S. Ct. 2157 (1997) address these issues and better de-fine the power of Congress. While Congress is the final authority on public policy, in order to authorize actions for money damages against a state, consistent with the Eleventh Amendment and section 5 of the Fourteenth Amendment, there must be pattern of discrimination which violates the Fourteenth Amendment and the remedy; imposed must be congruent and proportional.

*Question 8:* If congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is missing such funds?

*Answer:* Under *South Dakota v. Dole*, 483 U.S. 203, 107 S. Ct. 2793 (1987), Congress may condition the receipt of funds on the adoption of legislation under Congress' spending power. The exercise of the spending power must be in pursuit of the general welfare. Deference should be given to Congress. The conditions must be stated unambiguously so a state may know the consequences of its choice and must be related to a federal interest. Finally, there must be no other provision of the Constitution that independently bars a conditional grant.

*Question 9:* Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* I am unaware of any. All legislation is presumed to be constitutional.

*Question 10:* Are there any federal statutes or sections thereof that go beyond Congress' enumerated powers under the Constitution?

*Answer:* I am unaware of any. All legislation is presumed to be constitutional.

#### Responses of Danny C. Reeves to questions submitted by Senator Leahy

*Question 1:* Please state whether you have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition and then describe the particulars of the offense.

*Answer:* I am informed that background investigation reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by the question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

*Question 2:* You represented the Kentucky High School Athletic Association in a Title IX case that went on for a number of years, *Horner v. Kentucky High School Athletic Association* ("KHSAA"). When this case went before the Sixth Circuit in,

1994 (Hornet I), your brief contained a number of arguments, including the following: (1) You argued that KHSAA was not subject to Title XX, even though the association performed the statutory duties of a recipient of federal funds (the management of interscholastic athletics) pursuant to state law. (1) You argued that only programs that directly received federal funds are covered by Title IX, even though Congress had passed the Civil Rights Restoration, Act of 1987 with the clear intent to ensure that Title IX (and the other analogous civil rights statutes), would be interpreted broadly. The Sixth Circuit rejected your arguments and found that KHSAA was covered by Title IX. Your argument that the specific program or activity must receive federal financial assistance appears to ignore that in passing the Civil Rights Restoration Act of 1987, Congress clearly stated that the "purpose of the Civil Rights Restoration Act of 1987 is to reaffirm the pre-Grove City College judicial and executive branch interpretations and enforcement practices which provided for broad coverage of the anti-discrimination provisions of [the] civil rights statutes." S.Rep. No. 100-64, at 2 (1987).

Do you agree that in passing the Civil Rights Restoration Act of 1987, Congress clearly expressed its intent to overturn the program-specific reading of the Grove City case, even though you appear to have asserted this program-specific interpretation in your brief?

*Answer:* Arguments made as an advocate in this and other matters do not necessarily reflect my personal feelings or opinions. If confirmed, I agree to follow the doctrine of stare decisis and faithfully apply all applicable precedents to the facts presented in all cases regardless of whatever personal feelings or opinions I might have.

Review of relevant authorities indicates that Congress intended to expand the scope of Title IX beyond the holding of *Grove City College v. Bell*, 465 U.S. 555 (1984) through the Civil Rights Restoration Act of 1987. However, I do not believe that the arguments made in *Horner* are inconsistent with Congressional intent. Questions remained after 1987 concerning the extent of Title IX expansion as it related to entities such as the Kentucky High School Athletic Association (KHSAA), which do not directly receive federal funds. For example, four years after passage of the 1987 amendments, the court in *Kleczek v. Rhode Island Interscholastic League*, 768 F.Supp. 951 (D.R.I. 1991), concluded that the provisions of the statute did not extend beyond the entity actually receiving the federal funds. In *Horner* the court recognized that no program or activity of the KHSAA received federal funding. Further, no evidence was presented that any member of the KHSAA used federal funds to pay membership dues. Likewise, as the Sixth Circuit explained, the party delegating authority to the KHSAA (the Kentucky State Board of Elementary and Secondary Education) also did not directly receive federal funds. *Horner* 43 F.3d 265, 272 (6<sup>th</sup> Cir. 1994). Therefore, the question in did not raise the same question that had been presented earlier in *Horner*. Instead, the issue presented involved separate entities. Review of relevant authorities decided before *Grove City* also supported the arguments made on behalf of the KHSAA in *Horner*. See *Yellow Springs Exempted Village School Dist. Bd. of Educ. v. Ohio High School Athletic Ass'n*, 647 F.2d 651 (6<sup>th</sup> Cir. 1981).

*Question a:* Do you agree, as the Sixth Circuit in *Homer* ruled, that Title IX properly reaches entities such as KHSAA, that perform the duties of a recipient of federal funds?

*Answer:* For the reasons outlined above, it would be incorrect to characterize the KHSAA as performing the duties of a recipient of federal funds inasmuch as the Sixth Circuit hold that the Kentucky State Board of Education (as contrasted with the Department of Education) was not a federal funds recipient. However, I understand and appreciate the basis of the Sixth Circuit's ruling in *Hornet* concerning direct versus indirect recipients of federal funds. I would follow and other relevant decisions if my nomination is confirmed.

*Question b:* Additionally, do you agree, as the Sixth Circuit indicated, that Congress has made it clear that the scope of Title IX's equal education opportunity obligations go to "the furthest reaches of an institution's programs?"

*Answer:* As noted above, I understand and appreciate the basis of the Sixth Circuit's ruling and would follow it in any applicable cases that would come before me if my nomination is confirmed.

*Question 3:* In *Horner II*, you argued, in part, that the appellants disparate treatment claim should fail because they "failed to offer any evidence of gender-based discriminatory animus or conduct on the part of KHSAA."

Do you believe that animus is part of the required showing in a disparate treatment cast, despite the Supreme Court's decision in *UAW v. Johnson Controls* hold-

ing that a sex-based classification policy constituted intentional discrimination regardless of motivation?

*Answer:* As an initial matter, the issues presented in *Horner II* are distinguishable from *UAW v. Johnson Controls*. *Horner II* involved an implied cause of action for monetary damages under Title IX, a statute enacted under the Spending Clause. For the reasons outlined and explained in *Franklin v. Gwinnett County Public Schools* 503 U.S. 58 (1992) and *Pennhurst School and Hospital v. Halderman* 451 U.S. 1 (1981) monetary damages are not appropriate for unintentional violations of the statute. Based upon these authorities, evidence of intentional discrimination is necessary in order to seek recovery of monetary damages for an alleged violation of Title IX in the athletic context. Conversely, the plaintiff asserted that monetary damages could be recovered absent such proof of intentional discrimination. The Sixth Circuit agreed with the KHSAA's position. In relevant part, the court held that the case was the "Title IX equivalent" of *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582 (1983). While holding that the plaintiffs had not provided any evidence of intentional discrimination (applying either a discriminatory animus or deliberate indifference standard), the court also held that the plaintiffs had failed to establish the elements of a Title IX claim.

On the other hand, *International Union UAW v. Johnson Controls*, 499 U.S. 187 (1991) involved a challenge under Title VII to an employer's policy of barring fertile women from jobs involving exposure to lead exceeding OSHA standards. Unlike Title IX, Title VII applies to employers without regard to federal funding and was not enacted under the Spending Clause. Therefore, Title VII does not have the attendant notice requirement for Title IX claims requiring a showing of intent to discriminate. Title VII aims to compensate injured parties through monetary damages not to control federal funding of an activity. See *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 286–290 (1998).

Again, if confirmed, I will follow the doctrine of stare decisis and apply all governing Supreme Court and Sixth Circuit precedent with respect to all such issues.

*Question:* In the athletics context, do you agree that intent can be established as a matter of law by the facial sex-based classification of separate men's and women's programs?

*Answer:* In considering whether discriminatory intent can be established as a matter of law solely based on having separate athletic programs for men and women a court would be required to consider that "a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved a contact sport." 45 CFR §86.41. See also *Yellow Springs Exempted Village School District Board of Education v. Ohio High School Athletic Ass'n.*, 647 F.2d 651, 657 (6th Cir. 1981) ("Separate teams may to a large extent aid in this [gender] equalization not only because they provide more opportunities but also because they make monitoring of the opportunities provided easier.") If confirmed, I will follow all governing Supreme Court and Sixth Circuit precedent with respect to such issues.

*Question 4:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment. The supreme court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, granting states' significant now authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* As an initial matter, I understand and appreciate the limitations imposed by the United States Constitution upon all branches of the Federal government. The powers delegated by the Constitution, to the federal government are limited and defined, whereas those which remain with the states are numerous and undefined. The framers intended that this balance would "reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S. 452 (1991). Beginning in *Gibbons v. Ogden*, 9 Wheat 1 (1824), the Court has attempted to define the nature, scope and extent of Congress' commerce power. While subsequent decisions may be viewed as either expanding or limiting Congressional power and authority in this area, all cases recognized that the effect upon interstate commerce should not be so remote

or indirect that the distinction between what is national and what is local is rendered a nullity. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937). I am also familiar with recent cases which have imposed certain limits on legislative power in areas traditionally reserved to the states. See, e.g., *United States v. Lopez*, 514 U.S. 549 (1995), *City of Boerne v. Flores* 521 U.S. 507 (1997) and *United States v. Morrison*, 529 U.S. 598 (2000).

As a general rule, Federal statutes come to the courts with a presumption of constitutionality, absent a binding judicial determination that the statute is unconstitutional. If confirmed, I would be mindful of this presumption. In addition, I would be bound by the doctrine of stare decisis.

**Question 5:** Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

**Answer:** To abrogate the States' Eleventh Amendment immunity, Congress must unequivocally intend to do so and must act pursuant to a valid grant of constitutional authority such as Section 5 of the Fourteenth Amendment. Further, legislation enacted under Section 5 which exceeds the scope of the guarantees enumerated in Section 1 of the Fourteenth Amendment must exhibit congruence and proportionality between the injury to be prevented and the means adopted to that end. *Board of Trustees of the University of Alabama v. Garrett*, 121 S.Ct. 955 (2001); *Kimel v. Florida Bd. of Regents*, 120 S.Ct. 631 (2000).

Again, Federal statutes come to the courts with a presumption of constitutionality, absent a binding judicial determination that the statute is unconstitutional. If confirmed, I would be mindful of this presumption.

**Question 6:** If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

**Answer:** Whether Congress may abrogate state sovereign immunity in the circumstances described will depend upon the application of principles developed in related Supreme Court cases to a specific set of facts. If confirmed, I will faithfully apply governing precedents while respecting the presumption of constitutionality applicable to all acts of Congress. See *South Dakota v. Dole*, 483 U.S. 203 (1987); *College Saving Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666; 689 (1999).

**Question 7:** Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

**Answer:** I am unaware of any specific federal statutes or sections of statutes that are unconstitutional. If confirmed, I will faithfully apply governing precedents while respecting the presumption of constitutionality applicable to all acts of Congress.

**Question 8:** Are there any federal statutes or sections thereof that go beyond Congress' enumerated powers under the Constitution?

**Answer:** I am aware of cases decided by the United States Supreme Court holding that particular federal statutes or sections exceed Congress' enumerated powers. Several of those cases are cited above. If confirmed, I will faithfully apply governing precedents while respecting the presumption of constitutionality applicable to all acts of Congress.

#### **Responses of Julie A. Robinson to questions submitted by Chairman Leahy**

**Question 1:** Please state whether you have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," Please provide the relevant dates of arrest, charge and disposition and then describe the particulars of the offense.

**Answer:** I am informed that background investigative reports on nominees prepared by the Federal Bureau of Investigation (FBI) routinely address the type of information called for by this question. Without waiving the confidentiality of the FBI background investigation report prepared on me, I respectfully direct your attention to that report for a response to this question.

**Question 2:** In February of this year, I offered an amendment to the Bankruptcy Reform Act to increase the number of bankruptcy judgeships. You might be inter-

ested to know that the amendment was accepted and is part of the bill that passed the Senate and is now in conference with the House.

In addition to increasing the number of bankruptcy judgeships, are there other reforms that you believe we should consider to help the federal courts better handle the heavy docket of bankruptcy cases?

*Answer:* As bankruptcy case filings continue to escalate each year, additional bankruptcy judgeships will significantly foster the efficient handling and adjudication of bankruptcy cases. Because both the Senate and House versions of the Bankruptcy Reform Act include a number of changes that will substantially affect the administration of bankruptcy cases, it is important that the final legislation include a means of evaluating the effect of these changes.

*Question 3:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably, several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress's power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state government, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, granting states' significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they, appear to reflect a "new federalism" crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Answer:* In a series of cases, the Supreme Court has interpreted the Commerce Clause of Article I, as well as the scope of sovereign immunity under the Eleventh Amendment, as placing contain limitations on federal legislation as applied to states. In *Bd. of Trustees of the Univ. of Alabama v. Garrett*, 531 U.S. 955 (2001) and *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court has addressed the scope of Congress's power to abrogate sovereign immunity under Section 5 of the Fourteenth Amendment. If confirmed as a United States District Judge, I would follow the precedent of the United States Supreme Court in these cases, also respecting the strong presumption of constitutionality applicable to all Acts of Congress.

*Question 4:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Answer:* In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court ruled that Congress may use its power under Section 5 of the Fourteenth Amendment to abrogate sovereign immunity from legislation that remedies or prevents constitutional violations; but there must be a "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." The Court has not ruled per se, that Section 5 of the Fourteenth Amendment may not be the basis for legislation creating a private cause of action against states for discrimination analyzed under rational basis scrutiny. While the cases that have come before the Court to date have implicated classes requiring strict or heightened Scrutiny, the Court presumably will have occasion to consider the application of the congruence and proportionality test to other legislation.

*Question 5:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Answer:* The Supreme Court has ruled, with respect to the Tenth Amendment, that while Congress may not enact legislation that appropriates or controls the functions of state government, it may gain a state's cooperation in accepting duties imposed by federal law by providing the incentive of federal funding. This question raises an interesting issue, Congress's ability to enforce such an agreement with a state who later violates the agreement. If confirmed, I would follow the precedents of the Supreme Court in this, as in all areas.

*Question 6:* Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Answer:* It is possible that a state may claim sovereign immunity from one of the hundreds of other federal statutes, as to which the Supreme Court has not yet ruled; but it is only the in context of an actual case or controversy, brought by affected parties with standing, when the matter is ripe for decision, that judges should

endeavor to determine the constitutionality of a statute. Statutes should generally be presumed constitutional, in recognition of the separation of powers and the judiciary's role of interpreting and applying legislation.

*Question 7:* Are there any federal statutes or sections thereof that go beyond Congress' enumerated powers under the Constitution?

*Answer:* Judges must start with the canon that statutes represent the will of the people as expressed through their elected representatives; and as such, statutes have a presumption of constitutionality. If confirmed, I will apply this principle of construction to any challenge to a federal statute on this basis.

### **Responses of James E. Rogan to questions submitted by Senator Leahy**

*Question 1:* Please state whether you have ever been arrested for, charged with or convicted of a crime, within twenty years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is "yes," please provide the relevant dates of arrest, charge, and disposition and then describe the particulars of the offense.

*Answer:* No.

*Question 2:* The development and commercialization of useful intellectual property has been one of the most critical hallmarks of American leadership in the global economy. The PTO has reported that in 2000, patent applications were up 12% over the previous year, and trademark applications were up 27%. The number of issued patents increased by 15%, and issued trademark registrations was up 21%. The PTO expects that rate of increase to continue, but at the same time, it is taking about fourteen months to process a patent application and six months to process a trademark registration request. How do you intend to address this situation, which some have characterized as an impending crisis, of ever more applications and ever longer delays in addressing them?

*Answer:* My understanding is that, in fact, the filing of trademark applications has decreased. I would work within the Administration and with Congress to ensure adequate funding for the USPTO to support its investments in human and technological resources.

The USPTO is fully fee-funded by its customers. It does not receive a nickel of taxpayer money. USPTO, however, remains subject to the appropriations process, and not all fees collected are appropriated back to the USPTO. This adversely affects the agency's ability to meet increased workload demands. The most obvious effect of the current, unpredictable funding scheme is the agency's inability to process the work it has received or to make critical investments in staff and automated systems to improve services or manage future workloads. Since the USPTO does not generate a surplus, examination time is escalating, service to fee-paying customers is suffering, and automation programs designed to streamline operations are being postponed.

During my congressional service I was pleased to work with you, Mr. Chairman, in fighting to end the diversion of funds. I strongly support adequate funding for the USPTO, and I am troubled by the diversion of USPTO fees to other government programs. People who pay fees for a particular USPTO service should not have a portion of that transferred to unrelated programs.

USPTO customers deserve a quality product delivered in the shortest possible time. I recognize that the USPTO, like any other government agency, must be held accountable. USPTO needs to effectively communicate just what resources it needs and how it will use them to provide the very best service to its customers.

*Question 3:* What are your views about whether the PTO has any role to play in assisting the Federal Trade Commission in its investigations of possible abuses of patent protection, to the detriment of consumers and the competitive process, by pharmaceutical companies?

*Answer:* Consistent with the provisions of the American Inventors Protection Act, I would advise any Federal department, as necessary, on matters of intellectual property policy in the United States and intellectual property protection in other countries. I would look forward to working with all agencies within the Administration on any issues involving intellectual property.

*Question 4:* While in the House of Representatives, you served on the Court and Intellectual Property Subcommittee of the House Judiciary Committee. What did you learn about the PTO from that experience, and how do you intend to bring that experience to bear as Director of the PTO?



*Answer:* I learned that the PTO is an organization consisting of dedicated individuals committed to delivering quality products and services to its customers. The PTO is the lynch pin for the best intellectual property system in the world. I would work within the Administration, with Congress, and with PTO's customers to maintain and improve it to make it even more efficient and cost-effective.

*Question 5:* As intellectual property issues are increasingly at the forefront of global marketplace debates, what is your view about whether the United States should join the rest of the world's nations in adopting a system for awarding priority of invention based strictly on application on filing dates, rather than on a determination through lengthy interference proceedings about who is the first inventor?

*Answer:* The merits of a first-to-file system versus our current first-to-invent system have been debated for many years. I would hesitate to endorse any change in our patent laws without a thorough exchange of views and discussions within the Administration and with Congress and representatives of the patent community. I would always be willing to consider adoption of suggested best practices that could serve to improve the quality of our intellectual property system.

*Question 6:* How do you intend to attract talented and dedicated individuals to serve as patent examiners, especially in the computer software, biotechnology, and other high technology areas, particularly when people with the relevant skills are likely to be highly sought after in the private sector?

*Answer:* I would build on the many employee-friendly initiatives currently underway at PTO, including pay incentives, recruitment bonuses, flexible work schedules, tuition reimbursement and a telecommuting pilot program.

*Question 7:* There have been some worrisome rumors that examiners are rewarded or compensated based on how many applications they grant, rather than on the actual quality of those applications. Is that the case, and if it is, how do you intend to address the issue?

*Answer:* My understanding is that the PTO's current evaluation system includes quality considerations. I would work to ensure that an examiner's performance rating and related compensation continue to be based on standards that focus on qualitative as well as quantitative factors.

*Question 8:* During the recent anthrax crisis here on the Hill, Senator Schumer had suggested that the federal government should over-ride Bayer's patent rights in Cipro and pay a number of other manufacturers to start producing that antibiotic. What is your view about whether and when such actions—subsuming intellectual property rights in the name of the public interest—would be appropriate?

*Answer:* I believe there is sufficient flexibility under our laws, international agreements, and alternative medical supplies to deal with any current emergency. Any future contemplated action should be thoroughly deliberated and should strike a balance that promotes distribution of life-saving drugs while maintaining incentives to innovate, develop and commercialize those drugs.

*Question 9:* While trademarks and patent are dealt with at the PTO, copyrights are another tremendously important variety of intellectual property, especially as we move to an ever more global economy. What is your view of the role of the Copyright Office in international and domestic copyright policy?

*Answer:* The USPTO has, within the Executive Branch, the lead responsibility for policy formulation in all areas of intellectual policy patents, copyrights and trademarks. In that capacity, I would ensure that the PTO maintains close contact with the Copyright Office of the Library of Congress to make certain that these two entities with responsibility for copyright policy formulation work together to the greatest extent possible. In discharging our executive responsibility for the conduct of international policy formulation, we would consult regularly with the Copyright Office to ensure their participation.

Some three months ago I met informally with the Registrar of Copyrights to personally assure her that if I am confirmed I will look forward to working with her as part of a team.

*Question 10:* Business method patents have been the topic of considerable press in recent months, as fewer patents are sought for "widgets" and more are sought for business methods, particularly in the arena of electronic commerce. Last year, the PTO initiated some efforts to enhance the quality of its review of these applications, and sought to involve the e-commerce and other high tech communities in that effort. Do you believe this effort has been successful? More generally, what is your view on such patents, and how they should be viewed and handled within the existing patent system?

*Answer:* My understanding is that the PTO is pleased with the results so far of its Business Methods Patent Initiative, and that feedback from industry has been positive as well. I believe we should be very careful before we carve out any area

of technology for special treatment under patent law. Patent law is generally technology neutral and has served our nation quite well over the past two hundred years.

The statutory standard for patentability requires the invention be new, useful and nonobvious. I would expect any business methods patents that issue to meet that standard, rather than merely reducing to software that which has been anticipated or used previously. If some special attention is necessary, it would be my hope that it could be handled administratively.

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#### SUBMISSIONS FOR THE RECORD

##### **Statement of Hon. Max Cleland, a U.S. Senator from the State of Georgia**

Thank you, Madam chairwoman for giving me the opportunity to introduce Clay Land to this Committee during his confirmation hearing.

It is my pleasure to recommend him for the position of United States District Court Judge for the Middle District of Georgia.

Mr. Land has had over 16 years of experience as a litigator and has earned the respect of his colleagues in the legal and political communities and is, therefore, well qualified to serve as District Court Judge. Clay graduated *magna cum laude* from the University of Georgia and, subsequently, attended the University of Georgia School of Law where he served on the Law Review and was inducted into the Order of the Coif.

Following graduation from law school, Mr. Land returned to his home town of Columbus where he practices as a civil litigator, first, with the firm of Hatcher, Stubbs, Land, Hollis & Rothschild and, then, with the firm he co-founded, Buchanan & Land. At the age of 32, Mr. Land succeeded his father as a member of the Columbus Consolidated City Council. After serving a brief time on the City Council, Mr. Land was elected to the Georgia State Senate. Mr. Land served as a State Senator for three terms, but retired after the 2000 session in order to spend more time with his young family.

As a State Senator, Mr. Land served on the Judiciary Committee and was Chairman of the Study Committee on Civil Justice Reform. In 1990 and 1991, he served as the co-Chairman of the Columbus Pro Bono Project Committee and in 1993 was chairman of the Indigent Defense Council. Mr. Land is currently on the Advisory Board of the Columbus Bank & Trust Company and on the Board of Directors of Land, Inc. of Columbus, of the Springer Opera House, Inc., and of Twin Cedars Youth Services, Inc.

Clay Land has proven himself to be an excellent attorney and public servant to the state of Georgia. I believe that Mr. Land would make a solid District Court Judge for the Middle District of Georgia, and, as such, I have given him my full support. I hope that he will be approved by the Committee and confirmed by the full Senate as soon as possible.

Thank you, Madam Chairwoman.

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##### **Statement of Hon. Patrick J. Leahy, a U.S. Senator from the State of Vermont**

I want to thank Senator Feinstein for chairing this important hearing. In addition to hearing from James Rogan, the nominee to head the Patent and Trademark Office and serve as Under Secretary of Commerce for Intellectual Property, we will hear from five judicial nominees.

I had a productive meeting with Mr. Rogan a few weeks ago and have spoken with Secretary Evans about this nomination. Senator Feinstein and I both know the importance of intellectual property to our economy and look forward to working with the new Under Secretary in the days and months ahead.

Since July 10, 2001, the Senate has confirmed 16 judges, including four to the Courts of Appeals. We have already confirmed more District Court judges this year than were confirmed in the entire first year of the first Bush Administration in 1989 and more Court of Appeals judges than were confirmed in the first year of the Clinton Administration in 1993.

Within two days of the terrible events of September 11, I chaired a confirmation hearing for the two judicial nominees who drove to Washington while interstate air travel was still disrupted. Then on October 4, 2001 we held another confirmation hearing for five judicial nominees, which included a nominee from Nebraska who was unable to attend the earlier hearing because of the disruption in air travel.

On October 18, in spite of the closure of Senate office buildings in the wake of the receipt of a letter containing anthrax spores and Senate staff and employees were testing positive for anthrax exposure, the Committee proceeded under extraordinary circumstances in the United States Capitol to hold a hearing for five more judicial nominees. The building housing the Judiciary Committee hearing room was closed, as were the buildings housing the offices of all the Senators on the Committee. Despite these disruptions, we stayed on course.

Two weeks ago, while the Senate Republicans were shutting down the Senate with a filibuster preventing action on the bill that funds our nation's foreign policy initiatives and provides funds to help build the international coalition against terrorism, the Judiciary Committee nonetheless proceeded with yet another hearing for four more judicial nominees on October 25, our third hearing involving judicial nominees in October.

Today we convene the fifth hearing for judicial nominees within eight extraordinary weeks—weeks not only interrupted by holidays, but by the aftermath of the terrorist attacks of September 11, the receipt of anthrax in the Senate, and the closure of Senate office buildings. In addition, during the same time we devoted our attention and efforts to expedited consideration of anti-terrorism legislation. Far from taking a “time out” as some have suggested, this Committee has been in over-drive since July and we have only redoubled our efforts since September 11.

We could not make this progress without the commitment and dedication of Senators like the Senator from California, who volunteered to chair this hearing, and the Senators from North Carolina, New York and the Senior Senator from Wisconsin, who each chaired a hearing during this difficult time. I thank them and commend them for their work.

#### **Statement of Hon. Zell Miller, a U.S. Senator from the State of Georgia**

Thank you, Madam Chairman, for allowing me to say a few words in support of the nomination of my fellow Georgian—Ashley Royal. As Sen. Cleland has already stated, Mr. Royal is well qualified to be a United States District Judge for the Middle District of Georgia. It is my pleasure to recommend him to the committee today.

Senator Cleland has outlined some of the details of Mr. Royal's distinguished career. I would like to focus on Mr. Royal's experience, which I believe shows him to be uniquely qualified public defender. His experience in private practice includes work on a wide array of civil matters including insurance defense, asbestos litigation, employment discrimination, and Section 1983 cases. Further, Mr. Royal's extensive experience trying cases in state and federal courts dates all the way back to his third year of law school. Mr. Royal also has significant experience in mediating cases and has taught at the University of Georgia Law School. All of this work history will serve him well on the Federal bench.

In short, Madam Chairman, I join Senator Cleland in giving Ashley Royal my full support. Throughout his career, he has shown himself to be a committed public servant. He is a smart, honest, and able attorney. He will be an exceptional judge. I hope that the Committee will approve his nomination and he will be confirmed by the full Senate as soon as possible.

Thank you, Madam Chairman.

SENATE REPUBLICAN  
HIGH TECH TASK FORCE  
*October 31, 2001*

The Hon. Patrick J. Leahy  
Chairman, Senate Committee on the Judiciary  
224 Dirksen Building  
Washington, D.C. 20510

Dear Mr. Chairman:

As members of the Senate Republican High Tech Task Force ("HTTF"), we respectfully urge you to schedule prompt Committee consideration of the nomination of James E. Rogan to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("PTO"), whom the President nominated on May 24. We know of your substantial efforts to modernize the U.S. patent system and bolster our intellectual property laws, and know that you share our desire to have an effective and dynamic leader at the helm of the PTO. We believe that Mr. Rogan is exactly that type of leader.

When the HTTF released its Policy Agenda earlier this year, the issue of PTO funding was a top priority: "The Task Force believes that the explosion of technology patents has made it more necessary than ever to ensure that the PTO has adequate fund through its own fee mechanisms, rather than siphoning off these fees for general government use." Also in April we wrote the Appropriations Committee requesting that no PTO funds be diverted to general revenue use.

The Senate version of the Commerce, Justice, State and the Judiciary Appropriations bill predicates increased funding for the PTO on its ability to produce a long-term strategic plan by January 15, 2002. Having Jim Rogan promptly confirmed as PTO Director and able to contribute to such a plan would be a major step forward for the PTO in its quest for full use of its collected fees.

Mr. Rogan offers unique experience with intellectual property issues, having served on the House Judiciary Committee's Courts and Intellectual Property subcommittee. His service was marked by effective work on technology and intellectual property issues which should serve him well as PTO Director in addressing cutting edge issues such as biotechnology and business method patents.

Earlier this month, a coalition of 25 leading intellectual property and technology associations wrote you in support of the Rogan nomination. They commented that: "Prompt action on Mr. Rogan's nomination will help ensure that the PTO has the tools necessary to produce quality patents and trademark registrations on a timely basis."

We agree and respectfully ask that you schedule a hearing for Mr. Rogan as the first step towards his confirmation this year.

Sincerely,

SENATOR GEORGE ALLEN  
*Chairman, Senate Republican  
High Tech Task Force*

SENATOR WAYNE ALLARED

SENATOR SAM BROWNBACK

SENATOR JOHN ENSIGN

SENATOR GORDON SMITH

SENATOR RICK SANTORUM

SENATOR ORRIN HATCH  
*Ranking Member  
Senate Committee on the Judiciary*

SENATOR BOB BENNETT

SENATOR SUSAN COLLINS

SENATOR KAY BAILEY HUTCHISON

SENATOR KIT BOND

SENATOR JEFF SESSIONS

**NOMINATION OF CALLIE V. GRANADE, OF ALABAMA, TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA; MARCIA S. KRIEGER, OF COLORADO, TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO; JAMES C. MAHAN, OF NEVADA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA; PHILIP R. MARTINEZ, OF TEXAS, TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS; C. ASHLEY ROYAL, OF GEORGIA, TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA; AND MAURICIO J. TAMARGO, OF VIRGINIA, TO BE CHAIR OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES**

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**WEDNESDAY, DECEMBER 5, 2001**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:00 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Richard Durbin, presiding.

Present: Senators Durbin, Leahy, and Sessions.

**OPENING STATEMENT OF HON. RICHARD DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DURBIN. Good morning. I would like to call this hearing to order, if you will please take seats. This is a hearing of the full Senate Judiciary Committee to consider five of the President's nominees for the U.S. District Court and the President's choice to head the Foreign Claims Settlement Commission.

I want to welcome the nominees, their families, friends, and the sponsors from the Senate and the House who will be with us today. Many of our visitors today have traveled significant distances and we appreciate that.

This is the tenth judicial nominations hearing since the Senate reorganization in July. It is the 14th time we have considered exec-

utive branch nominees during that same time period. You might not know it from the newspapers, but this Committee has been working very hard. We have held unprecedented nomination hearings, two of them during the August recess, which may turn out to be the last recess we ever have. We held nomination hearings through terrorist attacks and the closure of our offices due to anthrax contamination. We continued to approve nominees even while we debated comprehensive anti-terrorism legislation in response to September 11.

A lot has been written and devoted to the subject of judicial nominations. Let me be the first to pay tribute to the five nominees for the Federal bench who join us today. Based on everything I have read and seen, they are men and women of exceptional integrity and accomplishment. They enjoy widespread, bipartisan support, records which demonstrate a commitment to our values as a nation, including the protection and advancement of civil rights and liberties for everyone. Simply put, we would not have disputes over judicial nominees if the President continues to send us nominees like the five before us today, especially for the Federal Courts of Appeal. This basic fact is many times lost in the din of partisan rhetoric.

My colleagues across the aisle have taken Chairman Leahy to task for not approving all of the President's nominees. I would just say, in five months, we have overcome many obstacles in the Senate. Chairman Leahy has held more judicial nomination hearings than the other party held in all of 1996, 1997, 1999, and 2000. When all is said and done, the Senate will confirm more judicial nominees this year than were confirmed during the first year of President Clinton's and former President Bush's terms in office.

I am going to make the rest of this statement a matter of record without reading it in detail because we have an exceptional situation here.

Our Senate Majority Whip, Senator Reid from Nevada, is here and he can inform me if my information is correct, but I think we have two roll call votes which are scheduled to start around 10:15, if I am not mistaken. So what we are going to try to do is to invite our panel of House and Senate members to make their statements and put other statements in the record before we break for a vote, and I apologize to everyone in attendance if this is a bit disjointed. We will start and stop a couple times here today, but we will get the job done, so bear with us.

We will now move to our first panel of witnesses, and I ask, Senator Sessions, do you want to make an opening statement?

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Mr. Chairman, we are delighted that this excellent panel is brought forward. There are some great nominees who I think will be a real asset to the Federal Bench and I thank you for your leadership in moving this forward.

Senator DURBIN. Thank you, Senator Sessions.

I would like to insert into the record a statement from Senator Hatch.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

It is both an honor and a pleasure to be here this afternoon with six extremely well qualified nominees for important positions in the Federal Judiciary and the Department of Justice. I congratulate all of you on being selected by President Bush to serve in high office. After reviewing your distinguished records, I have no doubt that you will do great service for the citizens of this country upon confirmation.

Before I say a few words about each nominee, however, I'd like to make a more general comment about the current status of the nominations process. Believe it or not, I am not the only one who has noticed that the Committee is making slow work of its job this year.

The *Washington Post* editorialized last week that the Committee should hold more judicial confirmation hearings, concluding that "[f]ailing to hold then in a timely fashion damages the judiciary, disrespects the president's power to name judges and is grossly unfair to often well-qualified nominees." The *Washington Times*, after reviewing a raft of statistics it had received in a letter to the editor, wrote on December 3<sup>rd</sup> that it had concluded that the Committee "must have confirmed about 223 judicial nominees, give or take a dozen hearings." As we know, this is far from the actual case. As the *Wall Street Journal* observed on November 27, there is a "pattern of judicial obstruction that has left 108 current vacancies on the federal bench. . . . With only days to go before the Senate adjourns for the year, only 28% of George W. Bush's nominees have been confirmed."

Among the nominees being held back by this Committee is Michael McConnell, whom the President has nominated to serve on the Tenth Circuit. Professor McConnell has received the ABA's highest rating, and he has tremendous bipartisan support in the Senate. It seems to me that holding hearings and votes on the persons whom President Bush has nominated to the bench would be much more helpful to the war against terrorism than our ongoing effort to determine whether Osama bin Laden is entitled to the benefit of Miranda warnings.

but non of what I just said takes anything away from my support and appreciation for the tremendously talented nominees before the Committee today.

*Callie Virginia Grande* clerked for Judge Godbold of what was then part of the Fifth Circuit. She then embarked on what was to become a 24-year career as a federal prosecutor. She has served in just about every capacity in the U.S. Attorney's Office—line prosecutor, senior litigation counsel, criminal division chief, First Assistant U.S. Attorney, and now interim U.S. Attorney.

*Chief Bankruptcy Judge Marcia Krieger* attended Lewis & Clark College, from which she graduated after three years *Summa cum laude*, and earned her law degree from the University of Colorado School of Law. She began her legal career in a general practice, and eventually developed a specialty in bankruptcy. She has served as a Bankruptcy Court Judge since 1994.

*Judge James Mahan* practiced law at the same firm in Law Vegas for 17 years, primarily focusing on business and commercial litigation, and in the process earned an "Av" rating from the Martindale Hubbell legal directory—as well as the respect of his peers. In February 1999, he was named a judge on the Clark County District Court. Since taking the bench on March 8, 1999, Judge Mahan has heard civil and criminal matters and trials involving a 3,000 case docket.

*Judge Philip Martinez* graduated from Harvard Law School in 1982 and developed a commercial litigation practice involving antitrust, securities, fraud, deceptive trade practices, contract, and banking issues. He has served as a judge in EL Paso County Since 1991, and has been particularly active in juvenile justice issues.

*Ashley Royal* graduated from the University of Georgia Law School in 1974, but he had already gained substantial litigation experience before then. During the summer of 1973, he worked as an Intern District Attorney under the Third Year Practice Act at the Chatham County District Attorney's Office. The Act authorized their-year law students to try cases as long as they were supervised during trial by a member of the bar. During his internship, Mr. Royal served as lead counsel in five jury trials, including and armed robbery and a murder case. He also handled approximately 30 bench trials. After graduating from law school, Mr. Royal worked as an Assistant District Attorney, as a Public Defender, and in private practice.

Last but certainly not least, *Mauricio Tamargo* was born in Cuba and fled to the United States with his family when he was four years old. He received his B.A. in History from the University of Miami and his J.D. from the Cumberland School of Law at Stamford University. His Legal experience includes working in various positions for U.S. Congresswoman Ileana Ros-Lehtinen and serving as Staff Director for several subcommittees of the House International Relations Committee.

Again, it is a great pleasure to welcome all of you to the Committee. I look forward to this hearing, and to working with Chairman Leahy and Others to make sure the Committee and the full Senate hold timely votes on your nominations.

Senator DURBIN. We will proceed in order of seniority with our colleagues who are in attendance. I have a list here, and I hope that it is complete, and it appears that the most senior member is Senator Reid of Nevada. Senator?

**PRESENTATION OF JAMES C. MAHAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Thank you very much, Mr. Chairman, and I do appreciate your brief statement. There is no question that today is like many other days and it shows the difficulty of having these hearings. I think that you are right in commending Chairman Leahy for organizing this hearing.

Mr. Chairman, Jim Mahan is, in my opinion, a lawyer's lawyer. Before I came here, I was a trial lawyer. I practiced law. I tried cases before juries, did administrative work, did what trial lawyers do, and Jim Mahan has had excellent training.

He began his practice that I noted working with one of the finest lawyers we have ever had in Nevada, a man by the name of John Peter Lee. He then formed his own law firm. He is now a judge in a court of unlimited jurisdiction where he has at his grasp literally thousands of cases. It is in Las Vegas and he is extremely busy, but he, in the short time he has been on that bench, has been a judge of note.

He is always ranked as one of the top judges in that district and I cannot say enough about Senator Ensign's recognizing his talents. I appreciate Senator Ensign coming to me and giving me Jim Mahan's name. I mean, it took five seconds. This is a fine lawyer, a great judge, and the country will be better for having Jim Mahan as a judge.

I ask unanimous consent that my full statement be made a part of this record.

Senator DURBIN. The Senator's statement will be made a complete part of the record here.

[The prepared statement of Senator Reid follows:]

**STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA**

Mr. Chairman, I would like to thank you, Chairman Leahy, and the entire Senate Judiciary Committee, for holding this hearing today.

Today's hearing is yet another example of how the distinguished Senator from Vermont and this Committee have gone out of their way to move judicial nominations forward in a timely and reasonable manner. This committee has worked extremely hard to move President Bush's judicial nominations, and you and this entire Committee are to be commended for your efforts.

I am pleased to appear before this committee in support of one of those nominees—Judge James C. Mahan, of Las Vegas, to be the next judge on the United States District Court for the District of support of both Senators from Nevada. Senator Ensign has made some excellent recommendations to the President and fully support his selections.

Jim Mahan currently serves as a Judge on the Eighth Judicial District Court in Clark County, Nevada. So respected by his peers and officials in Nevada, Jim Mahan was Governor Kenny Guinn's first judicial appointment to the Clark County District Court in February 1999. Since taking the bench on March 8, 1999, he has retained a docket of more than 3,000 civil and criminal cases. Despite this heavy docket, Judge Mahan also hears on a regular basis probate matters, drug court and



grand jury returns. And as of January, 2001, Judge Mahan is also a Business Court Judge.

As my colleagues have heard me state on numerous occasions, Las Vegas has been the fastest growing metropolitan community in the United States for more than a decade, and such hard work and dedication is required of our judges, policemen, firemen, and other civil servants on a daily basis.

These qualities will serve Judge Mahan well on the U.S. District Court for the District of Nevada, whose docket has increased at a rate that mirrors the explosive growth of my home state, especially in Las Vegas.

Mr. Chairman, I am so proud to have played a role in creating three additional judgeships for the District of Nevada over the last few years.

Prior to the Senate's confirmation of Roger Hunt and Kent Dawson last year, and Larry Hicks last month, Nevadans seeking justice in federal court were forced to wait up to three years before their case went to trial. And these delays may have been worse had it not been for such hard working judges, including our senior judges. In fact, when we were pushing for the creation of additional judgeships in Nevada, our two senior judges were hearing, on average, more cases than many active judges throughout the country.

Although the docket remains one of the busiest in the federal judiciary, these judgeships—and the fine jurists who have filled them—have had an immediate impact on the federal bench in Nevada.

When confirmed, Jim Mahan will fill a District Court under the leadership of Chief Judge Howard McKibben that is arguably the finest in the nation. Judge Mahan has demonstrated leadership in his own right on the Eighth Judicial District Court, where he chairs the Committee to Review and Revise that Court's Rules. He also serves as Chairman of the Clark Regional Judicial Council, as a member of the Joint Task Force on Civil/Criminal Specialization, and was appointed by the Nevada Supreme Court to the Study Committee to Review the Nevada Rules of Civil Procedure.

His leadership was confirmed by a 2000 survey conducted by the Las Vegas Review Journal in which Judge Mahan received a 95% retention rating and a 96.3% adequacy rating. Those percentage ratings were the highest rating of any sitting Judge in Nevada's Municipal Courts, Justice Courts, District Courts and Supreme Court. In short, Mr. Chairman, Jim Mahan has already proven that he is an excellent judge, and will be an outstanding addition to the federal bench in Nevada.

Prior to taking the bench, he and Frank A. Ellis III formed the law firm of Mahan & Ellis, Chartered, where they practiced law primarily in the areas of business and commercial litigation for seventeen years in Las Vegas.

A long-time resident of Las Vegas, having lived and practiced law continuously since 1973, Jim was admitted to practice in Nevada in 1974 in both state and federal court, the Ninth Circuit Court of Appeals in 1975, and the U.S. Supreme Court in 1980.

Jim Mahan was born in El Paso, Texas, on December 16, 1943. His family eventually moved to Grand Junction, Colorado, where he graduated from high school. Jim graduated from the University of Charleston in Charleston, West Virginia, in 1965, and received his law degree from Vanderbilt University School of Law in 1973. In between his graduate and law school studies, Jim served in the United States Navy.

Jim has also been blessed with a beautiful family and is joined here today by his wife of 33 years, Eileen as well as his long-time assistant, Jeri Winters. He and Eileen are the proud parents of one son James, Junior, who is a graduate of the University of Southern California.

Like Larry Hicks, who was considered by this Committee in October, and approved by the full Senate in November, Jim is a fine man, a fine Nevadan, and I am sure that he will be a fine judge.

He enjoys my full support, and I would urge this Committee—and the Senate—to confirm his nomination to the District of Nevada as quickly as possible.

Senator DURBIN. Senator Campbell is here.

**PRESENTATION OF MARCIA S. KRIEGER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO BY HON. BEN NIGHTHORSE CAMPBELL, A U.S. SENATOR FROM THE STATE OF COLORADO**

Senator CAMPBELL. Thank you, Mr. Chairman. I would also ask unanimous consent to include my complete statement in the record. We have a number of people that want to introduce different nomi-

nees, and with a vote coming up, I think I will try and be very brief, if I can.

I am very delighted and honored to introduce to the Committee today a tremendous legal mind and a very outstanding person from our State of Colorado, Judge Marcia Krieger, who is sitting behind us in the second row here. Judge Krieger is a third-generation native of Colorado and the daughter of retired Judge Donald P. Smith, Jr., who served on the Colorado State District Court and the Colorado Court of Appeals. I believe her to be overwhelmingly qualified and definitely the right person to serve on the Colorado Federal District Court.

I am not going to go through her legal accomplishments on the bench. They are a matter of record. I am sure the Committee will look them over. But I was quite impressed with them. As a layperson, of course, some of the things I do not understand that go on the bench, but I will tell you what, I think I understand human nature very well and Judge Krieger is not only an outstanding legal mind but participates in the community in a variety of ways. In fact, before we came in, I asked her of the couple of boards that she serves on that I was not aware of, trying to help children in Africa, for instance, and a board to help elevate the health of people who have AIDS in many countries. She has just been a good human being as well as a good judge.

As the Chief Judge for the United States Bankruptcy Court for the District of Colorado, she has a long and distinguished career, along with a distinguished record, too. She built a solid and respected law practice on the principle of trying to find common ground and using common sense, and I think that has served her well on the bench and certainly will in her future endeavors.

Along with her other notable accomplishments, she helped open the channels of communication between the bench, the bar, and the general public in regard to court policies and procedures. That includes the implementation of a pro bono representation program.

In addition to her seat on the Bankruptcy Court, she also is a member of the Tenth Circuit Bankruptcy Appellate Court, where she sits with other bankruptcy judges to consider appeals from bankruptcy courts operating in all the States of the Tenth Circuit except Colorado. She was appointed by Chief Justice Rehnquist in the fall of the year 2000 to serve as one of the three bankruptcy judges on the Bankruptcy Administration Committee of the Judicial Conference of the United States. In that capacity, she considers issues of importance to the administration of the bankruptcy system nationwide.

I think that I will stop with that because of our very short time, but I would hope that the Committee would read our full statements of her great accomplishments. I just want to tell you and the other Committee members, Mr. Chairman, that any person that can find time to raise a family, to balance the difficulty of being in a very, very high-stress lifestyle in public office or on the bench and still participate with the Boy Scout troops and other community groups is a person that is the kind of person I think we need more in public service.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator Campbell.

There are three remaining members of the panel, but Senator Leahy overheard that I had mentioned his name at the opening and wanted to come down and defend himself and I would like to give him the chance to say a few words.

[Laughter.]

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR  
FROM THE STATE OF VERMONT**

Chairman LEAHY. Actually, Mr. Chairman, I wanted to thank you for holding this. Of course, I am delighted to see my colleagues here and seeing Senator Campbell, as I have told him several times this year, also attempted to tell Senator Allard, but as I told Senator Campbell several times this year, of course we would have these hearings before we went out. We are actually holding the 16th nominations hearing since the Senate reorganized this summer, the tenth on judicial nominations. That is since July, the middle of July, when we had a reorganized Committee. I thank you, Senator Durbin and Senator Sessions, for doing this today.

We have withstood terrorist attacks, anthrax attacks, closing of buildings and everything else. We have had 27 judicial nominations reported favorably to the Senate. That includes six to the Court of Appeals. That is actually twice the total number of judges that were confirmed in all of the first year of the first Bush administration, twice as many judges to the Courts of Appeal than were confirmed in the first year of the Clinton administration, more judges than confirmed in all of the 1996 session.

We can consider these five on an expedited basis and I would assume Senator Hutchison and Senator Allard and Senator Campbell and Senator Ensign, and I know Senators Cleland and Warner would not object to us moving on an expedited basis. Then we would confirm 32 judges. That is approximately double the number the first year of the first Bush administration, actually more than the first year of the Clinton administration when the White House and Senate were controlled by the same party, so the number in the 12 months of 1997 or all of 1999.

I mention this because we are able to do it, basically, in five months. And just so people will know, we are holding more hearings on more judicial nominees faster and reporting and confirming more than during the last six-and-a-half years.

Each of the judicial nominees participating in this morning's hearing have been pending for less than 60 days since receipt of the ABA peer review. As we know, all judges are going to have to have that peer review.

We also have Mauricio Tamargo to head the Foreign Claims Settlement Commission, and I am pleased by the number of letters I have received on his behalf from Republicans and Democrats alike in Florida and also from the Republican Senators from Virginia, Democratic Senators from Florida on his behalf and that is very helpful.

I also might say, just as a matter of compliment to the White House and to Senator Hatch, there was some difficulty in moving some of these nominees because of a concern about nominees answering a couple of basic questions, questions actually far less intrusive than you would need to answer to get a job in the parking

garage at the Department of Justice for most courts. I compliment the President and Senator Hatch and others in agreeing to go forward and answer those questions. I think when they did that last week, we passed out, what, eight or nine people within just a few hours of them agreeing to that, so I appreciate the cooperation of all.

That is all I have to say, but I did want to thank Senator Durbin and Senator Sessions, both of whom have enormously busy schedules, for taking the time to do this, and all of you.

Senator DURBIN. Thank you, Chairman Leahy.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK G. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Today, the Judiciary Committee is holding its sixteenth nominations hearing and its tenth judicial nominations hearing since the Senate reorganized this summer. I thank Senator Durbin for volunteering to chair today's hearing for these six nominees. Since July, when the Senate was allowed to reorganize and the Committee's membership was set, we have maintained a strong effort to consider judicial and executive nominees.

During these last six, difficult months, the Committee has worked hard to report 27 judicial nominations favorably to the Senate, including six to the Court of Appeals. This is nearly twice the total number of judges that were confirmed in all of 1989, the first year of the first Bush Administration, and it includes twice as many judges to the Courts of Appeal as were confirmed in the first year of the Clinton Administration. It is also more judges than were confirmed in all of the 1996 session. In addition, if we are able to consider today's five judicial nominees on an expedited basis, the Senate may be able to confirm 32 judges—a number that would be more than double the number confirmed in the first year of the first Bush Administration, more than were confirmed in the first year of the Clinton Administration when the White House and the Senate were controlled by the same party, and approximately the total confirmations for the 12 months of 1997 and for all of 1999.

Thus, despite all the obstacles we have faced this year, we have matched or exceeded the number of confirmations of judges during the first Bush Administration and the last year of the first Clinton term. We are holding more hearings on more judicial nominees faster and reporting and confirming more than during the last six and one-half years. By way of example, each of the judicial nominees participating in this morning's hearings has been pending for less than 60 days since receipt of the ABA peer review.

Today we also consider the nomination of Mauricio Tamargo to head the Foreign Claims Settlement Commission. Mr. Tamargo comes highly recommended by Representatives for whom and with whom he has worked. He is also supported by Democratic and Republican Senators from Florida, where he was raised, and from Virginia, where he now lives. I look forward to Mr. Tamargo's answers to questions about the future direction of the Commission he is nominated to chair.

Senator DURBIN. Senator Hutchison?

**PRESENTATION OF PHILIP R. MARTINEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you very much, Mr. Chairman. Mr. Chairman, I am very pleased to be here today to introduce Judge Philip Ray Martinez to be a U.S. District Judge for the Western District of Texas.

I do want to thank all of you for holding this hearing and I want to especially emphasize that our U.S.–Mexico border courts have the most critical need. According to statistics from last year, the Western District of Texas handles the most criminal cases in the entire United States. The Southern District, which is still on the

border, for which Randy Crane awaits confirmation, has the third highest level after California's Southern District.

We are really trying very hard—Senator Feinstein and myself have introduced legislation to expand the number of Federal Courts along the border to try to alleviate the huge glut that is now in those courts all along the border, particularly California and Texas, and I would ask my colleagues on the Judiciary Committee to please expedite Senator Feinstein's and my bill so that we can begin to fill these courts so that justice will not be delayed and, therefore, not be denied.

I want to also say that as you are considering that legislation, at the very least, I hope you will expedite the confirmation of border prosecutors and judges like Judge Martinez and Judge Crane and the U.S. Attorneys that have been nominated, as well.

Chairman LEAHY. If the Senator would yield, we have been, on U.S. Attorneys, I think the practice here has been, in some cases, literally within hours of getting the paperwork, we have moved them through. We had a number of them where we ended up with my staff working with the White House staff until 3:30 one morning to complete the paperwork so we could get them all through, and they have been doing that and we have—almost every one has been there. In fact, I would urge the administration to send up marshals. They have not sent up a single marshal.

Also in the legislation the Senator from Texas refers to, I would like very, very much—I think she has got a very good piece of legislation. Perhaps if we could move a DOJ authorization bill, it might be something we could attach to that with her consent.

But we have moved 57 U.S. Attorneys, including Mr. Sutton from Texas, last week, and I know the Senator from Texas was very, very helpful in getting those through.

Senator HUTCHISON. Yes. I want to say that I appreciate that the prosecutor from the Western District has now been confirmed and it was expedited. The Southern District, which is the other border district, now has a U.S. Attorney nominee, and I hope you will do the same for him because that office particularly has issues that need to be addressed.

I do want to talk about Judge Martinez, who is one of our very most outstanding nominees. He is a District Judge in El Paso, where he has served since 1991, and before that, he was a County Court Judge in El Paso and has been elected by the people of El Paso.

He has more than ten years of experience at the trial court level. He graduated from the University of Texas at El Paso with highest honors and received his law degree in 1982 from Harvard Law School. In addition, he has been a Director of the El Paso Legal Assistance Society, the El Paso Holocaust Museum, the El Paso Cancer Treatment Center, and the Hispanic Leadership Institute. He was named in 1991 the El Paso Young Lawyers Association's Outstanding Young Lawyer.

I am one who believes that a Federal Judge should be a part of the community and not live in some isolated ivory tower, and I think Judge Martinez has shown that he is going to be that kind of Federal Judge, a part of the community but also an outstanding

leader in the legal field, and I will say that Senator Gramm joins me in highly recommending Judge Martinez.

Senator DURBIN. Thank you, Senator Hutchison.

I would just remind my colleagues who came in a few minutes late that we have a vote on very soon and then we are going to have to break, so if it is possible that we could get each of you to make a statement, an oral statement, and then put the remainder in the record, we might be able to complete that phase before we have to break for a vote.

Going by seniority, I see the arrival of Senator Warner, who may need a hand here to come forward. I know that he went over to visit our troops. It appears he came back with a wound, but he is undaunted.

**PRESENTATION OF MAURICIO J. TAMARGO, NOMINEE TO BE  
CHAIR OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES BY HON. JOHN WARNER, A U.S. SEN-  
ATOR FROM THE STATE OF VIRGINIA**

Senator WARNER. We have a wealth of talent here to introduce Mr. Mauricio Tamargo, and I am going to defer to the two members of Congress from Florida, and I think my friend, the senior Senator from Florida, is here also, so Mr. Tamargo is going to be well represented, but I did want to say that I am proud to have him in Virginia. He currently serves as staff director for an important Subcommittee in the House of Representatives.

Following your admonition, which I think is well taken, I will put the balance of my statement in the record and assure you that this gentleman is eminently qualified to continue his long and distinguished career in public service and I thank the chair and I thank my colleagues.

Senator DURBIN. Thank you, Senator Warner.

[The prepared statement of Senator Warner follows:]

**STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA**

Chairman Leahy, Senator Hatch, and my other distinguished colleagues on the Senate's Judiciary Committee, I am pleased to introduce a Virginian, Mauricio Tamargo, to serve as Chairman of the Foreign Claims Settlement Commission.

The Foreign Claims Settlement Commission is an independent agency within the Department of Justice that adjudicates the claims of U.S. nationals against foreign governments. Awards are funded from congressional appropriations, international claims settlements, or liquidation of foreign assets in the U.S. by the Departments of Justice and Treasury. Since the Commission was created in 1954, it has adjudicated over 660,000 claims with awards totaling in the billions of dollars.

As you all know, the Foreign Claims Settlement Commission serves an important mission. In my view, Mauricio Tamargo's experience in international affairs makes him well suited to serve in this position.

Mr. Tamargo is currently the staff director for the Human Rights and International Operations Subcommittee of the House of Representative's International Relations Committee. He also currently serves as Chief of Staff and legislative counsel for Representative Ileana Ros-Lehtinen—positions he has held for the Congresswoman for approximately 10 years.

Mr. Tamargo has also served as Staff Director for the House Subcommittee on International Economic Policy and Trade and as the Staff Director for the House Subcommittee on Africa.

Mr. Tamargo received his B.A. from the University of Miami and his law degree from the Cumberland School of Law at Samford University in Alabama.

Clearly, Mr. Tamargo has extensive professional experience in international affairs that will serve him well as Chairman of the Foreign Claims Settlement Com-

mission. He has dedicated a large portion of his career to public service, and I am thankful for his willingness to continue such service.

Senator DURBIN. Senator Graham, who owns more Florida ties than any human being—

[Laughter.]

Senator DURBIN. —comes here to speak on behalf of the Sunshine State. Senator?

**PRESENTATION OF MAURICIO J. TAMARGO, NOMINEE TO BE CHAIR OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES BY HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA**

Senator GRAHAM. Thank you very much, Senator, and I would be happy to have an Illinois tie if you would make one available.

Mr. Chairman, Senator Sessions, thank you very much and I appreciate your expeditious scheduling of this hearing today for Mr. Mauricio Tamargo. As Senator Warner has already said, Mauricio brings a very strong background of experience, expertise, and concern for the issues that he will face as Chairman of the Foreign Claims Settlement Commission. In that position, he will be representing the citizens of America in claims against foreign governments, ranging from claims of Holocaust survivors to those who have had their property confiscated.

Mauricio has had personal experience in this. His family fled from Cuba when he was only four years old. Since he has come to the United States, he has achieved the American dream and I hope with your assistance we will further augment that dream by being confirmed for this very important position.

He is currently serving as Staff Director of the House Subcommittee on International Operations and Human Rights, where he has had the opportunity to deal with issues involving American investors overseas who have had their property confiscated. He also has served as Staff Director of the House Subcommittee on International Economic Policy and Trade, where he has mastered the complexities of property rights as well as developing a working relationship with the State Department.

He has for many years been a very close associate, advisor, and part of the staff, now the Chief of Staff and Legal Counsel, to our distinguished Congresswoman from Florida, Ileana Ros-Lehtinen, who joins us today.

Mr. Chairman, requesting that the full statement be entered in the record, I strongly recommend Mauricio and urge this Committee's prompt consideration and forwarding of his nomination to the Senate for confirmation.

Senator DURBIN. Thank you very much, Senator Graham.

[The prepared statement of Senator Graham follows:]

**STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA**

Mr. Chairman, it is my pleasure to introduce Mauricio Tamargo, nominee to serve as Chairman of the Foreign Claims Settlement Commission.

As chairman of the Foreign Claims Settlement Commission, Mauricio will be responsible for making claims on behalf of American citizens against foreign governments. These claims are diverse, ranging from the claims of Holocaust survivors being compensated for their tragic suffering to Americans who have had property confiscated by foreign governments.

Mauricio, who at the age of four fled with his family from Cuba, has achieved the American dream. He serves as an example of what a person can aspire to be in this country.

After working his way through the University of Miami as an undergraduate, he earned a Jurist Doctorate Degree from Cumberland School of Law in Birmingham, Alabama.

Mauricio is currently the Staff Director for the House Subcommittee on International Operations and Human Rights, where he has witnessed first hand the many difficulties American investors face overseas including having their property confiscated.

He has also served as Staff Director and Counsel for the House Subcommittee on the International Economic Policy and Trade where he mastered the complexities of international property rights as well as developed a working relationship with the State Department, the chief policy agency that the Commission works with.

He various roles for Congresswoman Ileana Ros-Lehtinen from Florida, currently as Chief of Staff and Legal Counsel, and formerly as Legislative Director and Press Secretary, have helped him learn to be more responsive to constituents.

This trait will be essential as Chairman of the Foreign Claims Settlement Commission because many of the People the Commission helps are of limited means and rely on the government for assistance in regaining their property.

My office has worked with Mauricio since he came to Washington to work for Congresswoman Ros-Lehtinen. During this time, we have witnessed his integrity, hard work, and dedication as well as his exceptional leadership skills.

Through the course of his career, Mauricio has amassed substantial experience in international affairs as well as a strong commitment to public service.

Additionally, his keen sense of justice makes him an excellent candidate for this post where he will be able to help American citizens obtain justice from foreign governments.

Mauricio's experience, expertise, and conviction will enable him to fully execute the duties of Chairman of the Foreign Claims Settlement Commission and to help him work for justice for those Americans who have been wronged by foreign governments.

Senator DURBIN. I also apologize to all the visitors and the nominees that we do not have more time for this opening, but I am hoping that each of the members have a chance to say a few words and put their total statement in the record. We have six or seven Senators and Congressmen and about ten minutes to do it.

Senator Allard?

**PRESENTATION OF MARCIA S. KRIEGER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO BY HON. WAYNE ALLARD, A U.S. SENATOR FROM THE STATE OF COLORADO**

Senator ALLARD. Mr. Chairman, thank you very much. I want to thank you and Mr. Leahy for moving forward on some of our nominees. This is the first nominee we have from Colorado. We have three of them there to be considered. I really appreciate you moving forward on this in an expeditious way and I do appreciate it, along with Senator Campbell. I would like to thank Mr. Sessions and recognize him for his effort on the Committee also.

I just want to say it is a pleasure to be here today to introduce U.S. Chief Bankruptcy Judge Marcia Krieger of Denver. She has been nominated by the President to fill one of two vacancies that we have in the District Court there in Colorado. She will introduce her family, and I will let her go ahead and do that, and I will have my full statement put in the record.

Just for a matter of interest, her father is a retired Colorado Court of Appeals Judge, so the experience is in the family.

Both Senator Campbell and I have worked hard. We set up an advisory Committee made up of outstanding individuals in the



State of Colorado, and basically we gave them the mandate that we want to have the best qualified on the bench and we want to have somebody who has had real life experiences. I think as you look into the background of particularly Judge Krieger, you will note that she has had a lot of real life experiences and I think is very well qualified for the bench. I am proud to be able to push her nomination through the Senate and thank you.

Senator DURBIN. Thank you, Senator Allard.

[The prepared statement of Senator Allard follows:]

STATEMENT OF HON. WAYNE ALLARD, A U.S. SENATOR FROM THE STATE OF  
COLORADO

Mr. Chairman, Senator Hatch, and Members of the Committee, it is a pleasure to be here today to introduce U.S. Chief Bankruptcy Judge Marcia Krieger of Denver.

Judge Krieger has been nominated by the President to fill one of two vacancies on the Colorado Federal District Court.

I know that the Judge will introduce her family, but I do want to note that she has five children, Melissa, Kelly, Keidi, Miriam and Mathias. She is joined here by her husband, Harry Roberts and her parents, Don and Marjorie Smith.

I want to note that Judge Krieger's father is a Colorado Court of Appeals judge.

Both Senator Campbell and I are pleased that the Committee is holding this hearing today. Colorado is a fast growing state and the Colorado Courts have a heavy case load. It will be a great help to the legal system in our state if we can get Judge Krieger confirmed before this session ends.

Judge Krieger has been a federal bankruptcy judge for the District of Colorado since 1994, and she was appointed Chief Judge for the Bankruptcy Court for Colorado last year. She has extensive experience managing a case load.

Judge Krieger is a graduate of the University of Colorado School of Law and she currently serves as an adjunct law professor at her alma mater. She also has extensive private practice and litigation experience and is widely respected in our state.

The Senate should carefully review all judicial nominees, I have taken this responsibility very seriously as a Senator. I have worked hard to support the selection of federal judges of the highest qualification.

That is why Senator Campbell and I formed a Judicial vacancy Advisory Committee to screen candidates for District Court vacancies in Colorado.

This past Spring, once we learned the process that would be followed by the President in selecting federal judges, we appointed a six member Advisory Committee.

This Committee was made up of distinguished lawyers in our state.

They reviewed dozens of candidates for the two District Court vacancies in Colorado.

They narrowed the list down to nine qualified individuals.

I personally interviewed all nine, and I was very confident that all nine would make fine federal judges.

Senator Campbell and I then forwarded these names to the President and his legal counsel.

The President announced his selection of Judge Krieger from this list.

It is an honor to introduce and support Judge Krieger. I am confident that the Committee will find her as qualified as I do.

Senator DURBIN. Senator Gramm?

**PRESENTATION OF PHILIP R. MARTINEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS BY HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator GRAMM. Mr. Chairman, thank you very much. I know Senator Hutchison has spoken and I am sure that she has extolled the virtues of Judge Phil Martinez.

Let me just say, Phil is a top hand. He was a brilliant student at the University of Texas at El Paso. He went to Harvard Law School. He is the most respected judge in El Paso. He is a Demo-

crat office holder, but the Constitution is nonpartisan. I just cannot think of a better qualified candidate for the Federal bench. I am proud that I had the opportunity to recommend Phil to the President.

I appreciate you holding this hearing. I am confident that when you have looked at his credentials and met him, that you will agree with me that he is going to be a great Federal Judge. I am proud that he is young. He will be a Federal Judge for a long time and I think he will be very successful. This Committee will be very proud that they confirmed him.

Senator DURBIN. Thank you, Senator Gramm.

Senator Sessions?

**PRESENTATION OF CALLIE V. GRANADE, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. It is a particular privilege and pleasure for me today to introduce to the Committee a nominee of the highest order. Ginny Granade has the temperament, integrity, and legal knowledge, as well as the experience, that will make her an outstanding jurist on the Federal bench. I know this from first-hand experience.

Ginny served as an Assistant United States Attorney under my tenure for 12 years, when I served as United States Attorney in the Southern District of Alabama. She had been hired by the previous United States Attorney. So we have worked together and prosecuted cases together.

From that experience, I learned that Ginny was level-headed, fair-minded, trustworthy, and smart. Her current position as Interim United States Attorney for the Southern District of Alabama indicates that others think highly of her, as well. She will serve her State and country exceedingly well.

I am also pleased that her husband, Fred Granade, is here, who is an outstanding attorney in his own right, and Rives, Smith, and Joseph, their children, and my good friend and her good friend, Donna Dobbins, who is also an Assistant United States Attorney and just a wonderful person and prosecutor.

Ginny is a graduate of the University of Texas School of Law, and served as a law clerk to the Honorable John Goldbold of the United States Court of Appeals for the Fifth Circuit. Being selected to clerk on the Circuit Court of Appeals is an honor in itself. That court is now in the 11th Circuit. This is the same circuit for which Ginny is nominated to serve as a District Judge and it is the same circuit on which her grandfather, Judge Rives, once served as a Circuit Judge.

All this experience has no doubt aided her for her service on the Federal bench. I believe that her more than 20 years of experience in the United States Attorney's office, practicing in the very court she is now being nominated for, as well as extensive appellate experience before the 11th Circuit Court of Appeals, has given her the necessary exposure to understand how a Federal District Court, and more importantly, how a Federal District Judge, should conduct herself.

She joined the United States Attorney's office in 1977 as the first female Assistant United States Attorney in that district. She proved her merit as an outstanding prosecutor and a leader. For over a decade, it was said she never lost a case, and I think that was accurate. Actually, I am not sure she has lost one yet.

In 1990, because of her leadership qualities, she was promoted to Chief of the Criminal Division in the office and she also has served as a First Assistant United States Attorney. She was selected as Senior Litigation Counsel before that, which was quite an honor. Ginny was the first attorney in the district to achieve that honor. Her abilities in the courtroom have been demonstrated time and time again in her prosecution of the most complex white collar, fraud, tax fraud, and public corruption cases.

One case stands out to me. In 1990, I witnessed her prosecute a multi-defendant racketeering public corruption case. It was a very intense criminal prosecution. In my 15 years in Federal Courts, I have never seen a better closing argument. In the longest jury trial ever tried in the Southern District of Alabama, she tried the case successfully with dignity, integrity and professionalism.

The American Bar Association has given Ginny its highest grade of approval, unanimously rating her "well qualified." I am very pleased to see that recognition. Individuals that have worked with her and know her share in the ABA's recommendation. Former Senator Howell Heflin is a great fan of Ginny and has stated he knows of no opposition to her appointment.

Ginny's litigation skill, as well as command of the most complex issues, has won her respect and admiration from the press, her peers, and my overwhelming support.

Senator Leahy, I commend you for scheduling this hearing and placing her on the agenda. This court that she will be a member of is pretty much in a crisis. It is a three-judge court with only one active judge. We have had two vacancies for some time now and I believe it is considered to be the district in America with the longest existing crisis-level need for a nominee.

Chairman LEAHY. We may not be doing her a favor by sending her down there.

Senator SESSIONS. It is going to be a challenge. The cases have backlogged, for sure.

Ginny's integrity, experience, and commitment to the rule of law are outstanding. The thing I think is most valuable in a judge is judgment, and when I had a tough question in the office and I needed advice on what to do, I went to her office, as did every other Assistant United States Attorney. There was a stream of them in and out. I know Donna has done it many times. What does Ginny think about this, on a big issue? So I think that is a high compliment.

She will be a great District Judge and I am proud that she will be moving forward.

Senator DURBIN. Thank you, Senator Sessions.

[The prepared statement of Senator Sessions follows:]

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Mr. Chairman, I am pleased to introduce to the Committee a judicial nominee of the highest order. Ginny Granade has the temperament, integrity and legal knowl-

edge as well as experience that will make her an outstanding jurist on the federal bench. I know this from first hand experience.

Ginny served as an Assistant U.S. Attorney under my direction in the Southern District of Alabama, so we have worked together and prosecuted cases together. From that experience, I learned that Ginny was level-headed, fair minded, trustworthy and smart. Her current position, as interim United States Attorney in the Southern District of Alabama, indicates that others think highly of her as well. She will serve her state and her country well.

Ginny is a graduate of the University of Texas School of Law and served as a law clerk to the Honorable John Godbold, of the U.S. Court of Appeals for the 5<sup>th</sup> Circuit. That Court circuit for which Ginny is nominated to serve as a district judge, and the same circuit that her grandfather once served as a circuit judge.

And although this experience has no doubt aided her for service on the federal bench, I believe that her more than 20 years of experience in the United States Attorney's Office, practicing in the very court that she has been nominated for, as well as extensive appellate experience before the 11<sup>th</sup> Circuit U.S. Court of Appeals, has given her the necessary exposure to understand how a federal district court and more importantly how a federal district judge should conduct herself.

Since Ginny joined the U.S. Attorney's Office in 1977, as the first female Assistant U.S. Attorney in the Southern District of Alabama, she has proven her merit as an outstanding prosecutor and leader. In 1990, because of her leadership qualities, she was promoted to Chief of the Criminal Division of that office, and she also served at First Assistant United States Attorney. Her abilities in the courtroom have been demonstrated time and time again in her prosecution of complex white collar fraud, tax fraud and public corruption cases.

One case to me stands out. In 1990, I witnessed her prosecute a multi-defendant, racketeering, public corruption case. This was high stakes criminal prosecution. In my 15 years of practice in the federal courts, I have never seen a better closing argument. In the longest jury trial ever in the Southern District of Alabama, Ginny got the job done.

The American Bar Association has given Ginny its highest grade of approval, unanimously rating her as well qualified. Individuals that have worked with and know Ginny also share the ABA's recommendation. Former Senator Howell Heflin commented that he knows of "no opposition to her appointment."

Ginny's litigations skills as well as command of the most complex issues has won her the respect and admiration of her peers, and my overwhelming support.

I commend Chairman Leahy for scheduling this hearing and placing Ginny on the agenda, so that we can address a judicial crisis in the Southern District of Alabama. A letter I received from Chief District Judge Charles Butler underscores the need to move on this nomination. Judge Butler is the only active judge serving in the district, which is authorized to have three judges with a fourth approved by the Judicial Conference of the United States. One of these vacancies is the longest district court emergency in the country, so I appreciate the Chairman's willingness to move on this nominee.

Ginny Granade's integrity, experience, and commitment to the rule of law are outstanding. I recommend her as an outstanding individual, professional, attorney, and friend. She will make a great federal judge.

Senator DURBIN. Senator Ensign?

**PRESENTATION OF JAMES C. MAHAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA BY HON. JOHN ENSIGN, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator ENSIGN. Thank you, Mr. Chairman, and thank you, Chairman Leahy, for scheduling Judge Mahan. Judge Mahan has been rated—every year, our largest newspaper does a survey of all of the judges and of the attorneys on saying who should be retained and this last year, including all the local courts, State courts, Judge Mahan was rated number one in the State of Nevada, including the State Supreme Court.

It was my privilege to be able to recommend Judge Mahan's name to President Bush, and with Senator Reid's joint support, we are very proud and we think that he will make a great judge. There is something Senator Sessions said about judgment. He has

the right temperament to be a judge. We think he is going to be excellent.

We are very proud of our District Court in the State of Nevada. We think it is one of the best in the country, and it is with that that we think that Judge Mahan is going to make this bench even that much stronger.

He is married, has a son, James Junior, and I know they are proud of him, as well.

With that, I would ask unanimous consent that my full statement be made part of the record. I will keep my statement short today and just say that with this Committee's support, we will be adding a great jurist to the bench.

Senator DURBIN. Thanks, Senator Ensign, and your statement will be made part of the permanent record.

[The prepared statement of Senator Ensign follows:]

STATEMENT OF HON. JOHN ENSIGN, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, it is honor to come before the Senate Judiciary Committee today to introduce to you a man of the highest legal distinction, Judge Jim Mahan.

A long-time resident of Las Vegas, Nevada, Judge Mahan began his studies not in our great state, but at the University of Charleston in Charleston, West Virginia. Following graduation he attended graduate school before joining the United States Navy where he served until honorably discharged in 1969. Jim then studied and graduated from Vanderbilt University Law School.

Following graduation, Judge Mahan began his work in Nevada, first as a law clerk and then as an associate attorney. In 1982 he formed the law firm of Mahan & Ellis, where he practiced law primarily in the areas of business and commercial litigation for seventeen years. In February 1999, Judge Mahan's legal experience and expertise were recognized by Governor Kenny Quinn, who named him as his first appointment to the Clark County District Court.

Since taking the bench, Judge Mahan has heard civil and criminal matters involving a 3,000 case docket assigned to him. Judge Mahan's service on the bench has been of the highest order. He has overseen many of Nevada's most complex and controversial cases since taking the bench and has done so with great care, fairness, and prudence. In a survey conducted last year by Nevada's largest newspaper, Judge Mahan's retention rates scored the highest of any judge serving on state or local court in Nevada. . .and that includes the Nevada Supreme Court.

Judge Mahan's extensive legal background and his commitment to public service make him an excellent choice as U.S. District Court Judge for the District of Nevada. Mr. Chairman, I know his wife Eileen and his son James Jr. are proud of him for being here today, and the state of Nevada is proud of Him and all that he represents for our great state. I am proud to introduce Judge Jim Mahan before the Senate Judiciary Committee today and ask for your full support on his nomination.

Senator DURBIN. Senator Miller?

**PRESENTATION OF C. ASHLEY ROYAL, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA BY HON. ZELL MILLER, A U.S. SENATOR FROM THE STATE OF GEORGIA**

Senator MILLER. I will speak as fast as this Southern mountaineer can.

[Laughter.]

Senator MILLER. I am pleased to join with my colleague, Senator Max Cleland, in support of our fellow Georgian, Ashley Royal. He is imminently qualified to be a United States District Judge for the Middle District of Georgia. He has had extensive experience. He has served both as a prosecutor and as a public defender. He has tried cases in State and Federal Courts all the way back to his third year of law school. He has had significant experience in medi-

ating cases. He has taught at the University of Georgia Law School. All of his work history will serve him well on the Federal bench.

Throughout his career, he has shown himself to be a very committed public servant. He is highly intelligent. He is honest. He is an able attorney. He will be an exceptional judge and I hope the Committee will approve his nomination and that he will be confirmed by the full Senate as soon as possible. Thank you.

Senator DURBIN. Thank you very much, Senator Miller.

[The prepared statement of Senator Miller follows:]

STATEMENT OF HON. ZELL MILLER, A U.S. SENATOR FROM THE STATE OF GEORGIA

Thank you, Mr. Chairman, for allowing me to say a few words in support of the nomination of my fellow Georgian—Ashley Royal. As Sen. Cleland has already stated, Mr. Royal is well qualified to be a United States District Judge for the Middle District of Georgia. It is my pleasure to recommend him to the committee today.

Senator Cleland has outlined some of the details of Mr. Royal's distinguished career. I would like to focus on Mr. Royal's experience, which I believe shows him to be uniquely qualified public defender. His experience in private practice includes work on a wide array of civil matters including insurance defense, asbestos litigation, employment discrimination, and Section 1983 cases. Further, Mr. Royal's extensive experience trying cases in state and federal courts dates all the way back to his third year of law school. Mr. Royal also has significant experience in mediating cases and has taught at the University of Georgia Law School. All of this work history will serve him well on the Federal bench.

In short, Mr. Chairman, I join Senator Cleland in giving Ashley Royal my full support. Throughout his career, he has shown himself to be a committed public servant. He is a smart, honest, and able attorney. He will be an exceptional judge. I hope that the Committee will approve his nomination and he will be confirmed by the full Senate as soon as possible.

Thank you, Mr. Chairman.

Senator DURBIN. I also have a letter of support that has been sent by Senator Shelby in support of Ginny Granade.

I understand that Senator Bill Nelson will be sending a letter in support of the nomination of Mauricio Tamargo.

Those who are not familiar with the difference between the House and the Senate, because there are so many members of the House, they are called on many times to say as much as a Senator does in a very short period of time and we are going to give two of those members of the House a chance to do that right now, and I would like to call before us Congresswoman Ileana Ros-Lehtinen of Florida and her colleague, Congresswoman Carrie Meek of Florida. It is great to see both of you on this side of the rotunda, and if you could give us your one-minute speeches, we would greatly appreciate it.

**PRESENTATION OF MAURICIO J. TAMARGO, NOMINEE TO BE CHAIR OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES BY HON. ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Representative ROS-LEHTINEN. Thank you so much, Senator. As a Cuban American, I speak very, very fast in either language.

I am very proud to be here to support my Chief of Staff, Mauricio Tamargo. He is open minded, hard working, a great family man, intelligent, has the right temperament for the job. He is fair. He is able to work in a bipartisan manner. I think every Democrat

member of the Florida delegation would say that Mauricio is a man of his word and a person with whom you can work for the betterment of our nation.

We were limited to only two House members. Had the Department of Justice not limited us, we would have had the entire Florida delegation here supporting Mauricio's nomination.

In spite of his very Hispanic name and in spite of being a member of my staff in various capacities for almost 20 years, my golden retriever speaks better Spanish than Mauricio Tamargo. That is the only negative thing that you can say about Mauricio, and I have been working on it for a long time.

He was the first person whom I hired when I got elected 20 years ago. He has been a member of my staff at the Florida House, and now in the International Committee. He has headed several Committees which I have had the pleasure of chairing.

He will represent the interest of American property owners in a very impartial way as the U.S. House, the U.S. Senate, and the judges have interpreted. He understands the difference between being in the one branch of government and being in another, and I think that he will represent our country in the best possible way. He is a wonderful American and I think he will be a tremendous addition as Chairman of this Commission, so I thank you, Senator.

Senator DURBIN. Thank you very much.

Congresswoman Meek?

**PRESENTATION OF MAURICIO J. TAMARGO, NOMINEE TO BE  
CHAIR OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES BY HON. CARRIE MEEK, A REP-  
RESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Representative MEEK. Thank you very much, Senator. Every once in a while, as a member of the House, we get the privilege of being able to recommend someone who is truly unique. I think that Mauricio Tamargo is truly unique. I have known him almost as long as his boss has. I have known him in the Florida House of Representatives and now here in the Congress.

A lot of things I know about Mauricio, but one thing I know is that he is honest, he is fair, he is just, and when he gets to be the Chairman of this Commission, you are going to have a man of whom you can be very proud because he is going to rule with an unbiased hand, and I have known Mauricio that long. He is knowledgeable. He has been tested.

I hope that this Committee will take all of those things into consideration and know when Mauricio goes to the Foreign Claims Settlement Commission, you will have a man who can work in all neighborhoods, Hispanic, black, white, whatever. He is what I would call a very fine person to head any agency of government.

So with great support, I do hope that Mauricio will be chosen as the Foreign Claims Settlement Commission Chairperson, and I thank you.

[The prepared statement of Representative Meek follows.]

STATEMENT OF HON. CARRIE P. MEEK, A U.S. REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF FLORIDA

Thank you, Mr. Chairman, for the opportunity to testify before you today.

I am here to voice my enthusiastic support for the President's Nomination of Mauricio Tamargo as Chairman of the Foreign Claims Settlement Commission.

As a Member of the House of Representatives, as a citizen of this country, I want a Commission Chairman who is unbiased and fair;

Who is knowledgeable;  
Who is serious about his job, and about doing it well;  
who has demonstrated good judgement;  
and who has excellent management skills.

To me, the ideal candidate would also be enthusiastic about running an agency that has to decide complicated claims involving acts of Congress and international law, claims that can be large and that can sometimes affect thousands of people.

Mr. Chairman, Mr. Tamargo meets all of these criteria. He is an excellent choice for Commission Chairman.

I have known Mauricio for almost a decade, and I have found him to be a serious, dedicated and effective public servant. He is an honest man, a hard worker, and he is fair-minded.

I know that his first love has always been the law, that he is a professional, and that he will serve this country in this position with objectivity and distinction.

I feel strongly that Mr. Tamargo will use the power of this office to honestly and fairly adjudicate the cases that come before the Commission.

Mauricio Tamargo is a dedicated public servant. He is well-qualified for this important job.

I strongly urge that this committee to expeditiously approve his nomination and let him finally get to work.

Thank you.

Senator DURBIN. Thank you very much, Congresswomen Meek and Ros-Lehtinen.

Representative ROS-LEHTINEN. Thank you, Senator.

Senator DURBIN. Now I am going to make a mad dash for the floor, and in the meantime, if the five judicial nominees will come forward to the table and we will get you all set up. When I return, I will administer the oath and we will start the testimony. For the few moments, probably 20, this Committee stands in recess.

[Recess from 10:35 a.m. to 10:55 a.m.]

Senator DURBIN. We will reconvene and I would like to ask the five judicial nominees to come forward to the witness table. If you would all please rise and raise your right hand as I administer the oath.

Do you solemnly swear that the testimony you are about to give before the Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. GRANADE. I do.

Judge KRIEGER. I do.

Judge MAHAN. I do.

Judge MARTINEZ. I do.

Mr. ROYAL. I do.

Senator DURBIN. Thank you. Let the record reflect that all of the nominees answered in the affirmative.

We will begin with Ms. Granade, and if you would please be kind enough to introduce family members and friends who are present and make an opening statement if that is your choice.

#### **STATEMENT OF CALLIE V. GRANADE, NOMINEE TO BE DISTRICT COURT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA**

Ms. GRANADE. I do not have an opening statement other than to thank the Committee for holding this hearing and it is such an honor to be here.



I would like to introduce my family who is here, my husband, Fred Granade, who is a practicing attorney in Bay Minette, Alabama; my three sons, Rives, Smith, and Joseph, who are—Rives and Smith are college students, Joseph is a high school student; my colleague, Donna Dobbins, from the U.S. Attorney's office; and a good family friend, David DeJong, who practices law in Rockville, Maryland.

[The biographical information of Ms. Granade follows.]

UNITED STATES SENATE  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full Name: (include any former names used.)

**Callie Virginia Smith Granade (nickname: Ginny Granade) (Maiden name: Smith)**

2. Address: List current place of residence and office address(es)

**Residence: Bay Minette, Alabama**

**Office: U.S. Attorney's Office  
 63 South Royal Street, Suite 600  
 Mobile, Alabama 36602**

3. Date and place of birth:

**March 7, 1950 in Lexington, Virginia**

4. Marital Status: (include maiden name of wife, or husband's name.) List spouse's occupation, employer's name and business address(es).

**Married to Fred King Granade, attorney in private practice with the law firm  
 Stone, Granade & Crosby, P.C., 34 Pine Street, P.O. Box 1509, Bay Minette,  
 Alabama 36507**

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**Hollins College (now Hollins University), Roanoke, Virginia – 1968 to 1972,  
 BA degree - May 1972  
 University of Texas Law School, Austin, Texas – 1972 to 1975, JD degree, May 1975**

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected since graduation from college.

Summer 1972: store clerk at The Fort, a souvenir store (no longer in existence) in Fort Walton Beach, Florida.

1974-1975: Law clerk during law school for Arthur Mitchell, Attorney, Austin, Texas.

1975-1976: Law Clerk for Judge John Godbold, U.S. Court of Appeals, 5<sup>th</sup> Circuit (now 11<sup>th</sup> Circuit), Montgomery, Alabama.

1977-present: Assistant U.S. Attorney, (currently interim U.S. Attorney), U.S. Attorney's Office, Mobile, Alabama.

1987-present: Member, Board of Directors, Bayside Academy (college prep. school) Daphne, Alabama.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the committee.

Phi Beta Kappa (1972, Hollins College)  
Fellow, American College of Trial Lawyers

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Alabama Bar Association  
Texas Bar Association  
American Bar Association  
Federal Bar Association  
Mobile (Alabama) Bar Association  
Master Benchers, Paul W. Brock Inn of Court  
Alice M. Meadows Council (a local professional organization of women lawyers)  
Southern District of Alabama Advisory Committee on Rules  
Eleventh Circuit Court of Appeals Committee on Lawyer Qualifications and Conduct  
Alabama Law Foundation Scholarship Committee

**Alabama Law Foundation IOLTA Grants Committee  
Southern District of Alabama Committee to recommend Magistrate Judge  
candidates to the court.**

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**Lobbying: National Association of Assistant U.S. Attorneys  
American Association of Retired Persons (AARP)**

**Other: Career Women of Mobile (Alabama)  
International Trade Club (Mobile, Alabama)  
Holly Hills Country Club (Bay Minette, Alabama)**

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of such membership. Give the same information for administrative bodies which require special admission to practice.

**October 1975: Supreme Court of Texas (and all Texas courts)  
June 1976: U.S. Court of Appeals for the Fifth Circuit  
September 1976: Supreme Court of Alabama (and all Alabama courts)  
October 1977: U.S. District Court, Southern District of Alabama  
June 1980: Supreme Court of the United States of America  
October 1981: U.S. Court of Appeals for the Eleventh Circuit**

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**I have written no published works and have not given any speeches on issues of constitutional law or legal policy. I have given talks and speeches at continuing legal education functions or service clubs, concerning the mechanics of criminal prosecutions or trial practice. All of those presentations were made using hand written notes which were discarded after the event. There is one speech which was type-written, a copy of which is attached. It is entitled: "Address to new Inductees of the Alabama Bar, October 1985".**

13. Health: What is the present state of your health? List the date of your last physical examination.

**My health is very good. Last physical examination: July 2000.**

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**I have not held judicial office.**

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

**Not applicable.**

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**None (other than Assistant U.S. Attorney and interim U.S. Attorney – see answer To Question No. 6, above.)**

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

**Law clerk to Judge John C. Godbold, U.S. Court of Appeals for the Fifth Circuit (now Eleventh Circuit), Montgomery, Alabama, from August 1975 to August 1976.**

2. whether you practiced alone, and if so, the addresses and dates;

**I have never practiced alone.**

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

**1977 to present: U.S. Attorney's Office, Southern District of Alabama, 63 South Royal Street, Suite 600, Mobile, Alabama 36602. Assistant U.S. Attorney, 1977 – present; (currently serving as interim U.S. Attorney). Designated Senior Litigation Counsel in 1987. Chief of the Criminal Section, 1990–1997. First Assistant U.S. Attorney, 1997—March 2001. First Assistant U.S. Attorney and Criminal Chief, March 2001 – April, 30, 2001. Interim U.S. Attorney and First Assistant U.S. Attorney, May 1, 2001 – Present.**

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

**I have represented the United States for the nearly 24 years I have “practiced”. From 1977 through about 1984, I handled both criminal prosecutions and civil cases - mostly defending tort suits, defending the denial of social security benefits in district court, representing the IRS on summons enforcement proceedings, and representing various federal agencies as creditors in bankruptcy proceedings. During that period, I also handled every type of criminal prosecution brought by the office: drugs, violent crime, white collar, political corruption, etc...**

**From about 1984 through 1990, I handled many of the larger criminal trials in our office -- concentrating on public corruption, complex fraud cases, and tax fraud prosecutions. I also handled a variety of more routine prosecutions, but little to no civil work. During that time I participated once or twice a year as an instructor at the Department of Justice's criminal advocacy training programs.**

**In 1990, I became chief of the criminal section in the U.S. Attorney's office and took on many administrative duties, including the supervision of the criminal attorneys and their caseloads: assigning criminal cases for prosecution, reviewing**

indictments and cases, and acting as contact person for all investigative agencies. I continued to prosecute a few cases each year, as time permitted, and ordinarily supervised several complex white collar investigations at any given time.

From 1997 to the present, I have been the First Assistant U.S. Attorney, and have supervised both the Criminal and Civil Division supervisors, as well as having responsibility for the overall administration of the office and supervision of the Administrative Officer. I review major decisions made in both criminal and civil cases, and advise the U.S. Attorney daily. I have also continued to carry a reduced criminal caseload.

During my nearly 24 years as an Assistant U.S. Attorney, I have written all but one of the appellate briefs on appeals from the cases I have handled, and have orally argued those cases which have been set for oral argument before the Court of Appeals.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The only client I've represented is the United States, with the exception of one. In the early 1980's I represented a private citizen who was wrongfully denied reemployment after military service. Pursuant to a statute (38 U.S.C. 2022, the Veteran's Employment Rights Act), which permits the United States to prosecute such an action on behalf of the plaintiff. I represented the former soldier, Vivian Gail Adams, who sued the Mobile County Personnel Board for failure to re-employ her after her military duty. My client prevailed and won her suit after a non-jury trial. SD AL Civil Action No. 81-0524-P, Judge Virgil Pittman.

I have specialized in white collar and political corruption prosecutions. During the last 6 years, I have also been the office "expert" on computer and telecommunications law as it relates to the federal criminal practice.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My court appearances have been frequent throughout my entire career. In the last ten years, because of my supervisory duties, I have tried a lot fewer cases, but I still handle a significant caseload and regularly appear in court for grand jury, arraignments, probation

**and supervised release revocations, detention hearings, hearings on pretrial motions, guilty pleas and sentencing hearings.**

2. What percentage of these appearances was in:  
(a) federal courts;

**99.9%**

- (b) state court of record;

**.1%**

- (c) other courts.

**0%**

3. What percentage of your litigation was:

- (a) civil;

**Less than 3%**

- (b) criminal.

**More than 97%**

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

**Approximately 65 – all in federal court. I was sole counsel on all but a handful. On two cases I was chief counsel and had an associate with me. On three cases I was associate counsel.**

5. What percentage of these trials was:

- (a) jury;

**99%**

- (b) non-jury.

**1%**



18. Litigation: Describe the ten most significant litigated matters which you personally handled.

Give the citations, if the cases were reported, and the docket number and date if Unreported. Give a capsule summary of the substance of each case. Identify the Party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In each of the following cases I represented the United States of America before the United States District Court for the Southern District of Alabama.

1. United States v. Ellis McDonald, Charles Shaw, Lambert Mims and Francis Wilkie, Jr., S.D. AL Cr. No. 88-00190. This was a RICO, Hobbs Act, mail fraud, tax fraud and obstruction of justice prosecution arising out of a 5-year long joint investigation by the FBI, IRS, and Mobile County D.A.'s Office. Defendant McDonald owned a large plumbing and piping contracting business that performed a lot of public entity contracts. Lambert Mims was one of three Mobile City Commissioners and served as Mayor at the time of the offense. Charles Shaw was an insurance and real estate broker who did business with the city of Mobile and was a close personal associate of Mims. Francis Wilkie was the Water and Sewer Administrator for the Mobile Water Service System. McDonald, Shaw and Mims participated in a Hobbs Act extortion conspiracy by forcing an individual, who was seeking a contract with the city to build a steam plant, to give more than half of his company to Shaw in order to get the contract, and to allow McDonald to be the contractor on the job. All three were convicted of that offense. McDonald was also convicted of RICO based on the Hobbs Act and various fraud schemes where he paid bribes to Wilkie in order to allow him to pad bills and double-bill for work to the Mobile Water Service System. McDonald was also convicted of evading both personal and corporate income taxes, based, in part, on a laundering scheme where he would submit phony invoices to his own company for payment, and obtain cash which he used for payoffs. He was also convicted of obstruction of justice for attempting to have a witness present false testimony to the grand jury. (During the trial, an employee working at a greyhound race track partly-owned by McDonald attempted to bribe a juror to vote for acquittal for McDonald. That led to the eventual prosecution of that employee.)

The case was tried before Judge Charles R. Butler, Jr. The trial lasted 11 weeks, January 16 through April 3, 1990, and still holds the record

as the longest case ever tried in the Southern District of Alabama. The appellate brief was also the longest one I have written: 198 pages addressing 39 issues. The convictions were affirmed on appeal at 12 F.3d 217. The Supreme Court remanded the Mims conviction for consideration in light of an intervening Supreme Court case. The 11th Circuit again affirmed that conviction, and certiorari was denied.

I was lead counsel, handled all witnesses with the exception of several anti-character witnesses, and did the opening statement and closing argument. My co-counsel was then-Assistant Mobile County D.A., Joe Carl "Buzz" Jordan, (who had been appointed as a special assistant U.S. Attorney), 1155 Dauphin Street, P.O. Box 210, Mobile, Alabama 36601, (334) 432-5400. Lead Defense counsel were as follows:

For defendant McDonald:  
William J. Baxley  
Baxley, Dillard, Dauphin & McKnight  
2008 3rd Avenue South  
Birmingham, Alabama 35233  
(205) 939-0995

For Defendant Mims:  
Thomas M. Haas  
258 State Street  
Mobile, Alabama 36602  
(334) 432-0457, 438-9706

For defendant Shaw:  
Peter F. Burns  
Burns, Cunningham & Mackey  
50 St. Emmanuel St.  
(334) 432-0612

For Defendant Wilkie:  
(now) Judge Delano J. Palughi  
District Court, Mobile County  
Room 4300  
205 Government Street  
Mobile, Alabama 36644-2460  
(334) 574-8512

## 2. United States v. E.A. Gregory, et al, S.D. AL Cr. No. 80-00019.

This was a complex bank fraud prosecution which, originally, was personally handled by the U.S. Attorney. The case went up on interlocutory appeal, pre-trial. While it was on appeal, the administration changed and the Carter-appointed U.S. Attorney left. No attorney was assigned to the case while it was on appeal. When the case came back to district court, it was assigned to me. On short notice I had to prepare for this complex prosecution which had been indicted two years earlier.

E.A. Gregory, of Pensacola, FL., was majority stockholder and Chairman of the Board of a bank in a rural Alabama county. Together with his wife, and with the aid of certain bank officers and the successor owner to whom they sold their bank stock, they ran the bank into receivership by draining assets out of the bank through self-dealing and improper loans. The Gregorys and three other defendants were prosecuted for various bank fraud offenses and conspiracy. One defendant pleaded guilty prior to trial. The trial began on March 8, 1982, and concluded on April 5 with guilty verdicts. The trial judge was Robert Varner from the Middle District of

Alabama, sitting as a Southern District judge. The case was affirmed on appeal as to all defendants except the Gregorys, whose cases were remanded to the district court for a determination of whether or not immunized bankruptcy testimony had been used in the prosecution. 730 F.2d 692 (11th Cir. 1984). After the court (Judge W. Brevard Hand) determined that no bankruptcy testimony was used, the Gregorys pleaded guilty.

I was the sole prosecutor in the case. Lead defense counsel were:

For Defendants E.A. and Vonna Jo Gregory:	For Defendants Atkinson & Spurlock:
William J. Baxley	Roger M. Sherman
Baxley, Dillard, Dauphin & McKnight	601 North Baylen St.
2008 3rd Avenue South	Pensacola, FL 32501
Birmingham, Alabama 35233	(904) 434-8778
(205) 939-0995	

3. United States v. Sidney Gerhardt, et al, S.D. AL Cr. No. 82-0008

Sidney Gerhardt, a Mobile loan broker, Syracuse, NY attorney Joseph Adornato, and two others were indicted on fraud and conspiracy charges arising out of an advance fee loan brokering operation. The investigation took several years, with much grand jury work, and also encompassed an undercover operation. Only Gerhardt and Adornato went to trial, which lasted from August 9 - 24, 1982, before Judge W. Brevard Hand. Victim witnesses from all over the United States were brought in to testify. The defendants were convicted, and the convictions were affirmed on appeal in an unpublished opinion.

I was the sole prosecutor. Defense counsel were:

For Defendant Gerhardt:	For Defendant Adornato:
Richard D. Horne	John Rinaldi
182 St. Francis Street, Suite 300	800 University Building
Mobile, AL 36602	Syracuse, NY 13202
	(315) 475-2143
	(Last known address - no current listing)

4. United States v. James W. Parker, et al, S.D. AL Cr. No. 81-00053; United States v. Freddie Cannington, et al, S.D. AL Cr. No. 81-00090, and United States v. Robert F. Stewart, et al, S.D. AL Cr. No. 82-00028. These three cases arose out of one investigation involving importation of 29,000 pounds of marijuana in a shrimp boat from Colombia to Baldwin County, Alabama. The first case, with 6 defendants, involved the boat crew, radiomen, boat owners and off-load crew. The second two cases, which were consolidated for trial, involved the two organizers from Florida and Alaska, and two deputy sheriffs who were alleged to have accepted payoffs. The

trials occurred in 1982, before then District Judge Emmett R. Cox, Jr. (now 11th Cir. Judge).

I was the sole prosecutor. Lead defense counsel were :

W. Donald Bolton, Jr.  
P.O. Box 1965  
Foley, AL 36536  
(334) 943-3860

Julian B. Brackin  
Brackin & McGriff  
P.O. 998  
Foley, AL 36536  
(334) 943-4040

Claude D. Boone  
5 Dauphin Street  
Mobile, AL 36602  
(334) 433-1806

Robert F. Clark  
Clark, Deen & Copeland  
P.O. Box 2705  
Mobile, AL 36652  
(334) 433-5860

Edward R. Shohat  
800 Brickell Ave., Penthouse Two  
Co. Miami, FL 33131-2944  
(305) 358-7000

Judge Lionel Layden (Ret.)  
100 McGregor Avenue  
Mobile, AL 36602  
(334) 380-0011

5. United States v. Gurney Owens, S.D.AL Cr. No. 86-00030, and United States v. Douglas Wicks, S.D.AL Cr. No. 86-000124. These two cases resulted in two trials, but were part of the same investigation . Wicks was a County Commissioner for Mobile County, Alabama, and Owens was the Director of the county's Solid Waste Program. Owens solicited payments on behalf of Wicks from contractors attempting to obtain business with the county, and from engineers working for the county in exchange for not holding up their pay. Owens' trial took place from May 22 to May 28, 1986 before then District Judge Emmett R. Cox, Jr. He was convicted, but did not appeal. Wicks's trial took place also before Judge Cox from March 16 to 20, 1987. He, too, was convicted, with the conviction affirmed in an unpublished opinion.

I was the sole prosecutor in the case. The defense counsel were:

For Defendant Owens:  
James E. Atchison  
Atchison, Crosby, Saad & Beebe  
3030 Knottwood Drive  
Mobile, AL 36693  
(334) 665-7200

For Defendant Wicks:  
William A. Kimbrough, Jr.  
Turner, Onderdonk,  
Kimbrough & Howell  
1359 Dauphin Street  
Mobile, AL 36604  
(334) 432-2855

6. United States v. Jack Irving Scharf, Martin Bakerman, and Robert Paul Osborne, S.D. AL Cr. No. 83-00004. The three south-Florida defendants were indicted for a scheme to defraud a Mobile, AL bank of \$125 million. The three defendants, in meetings with an FBI undercover operative, developed a plan in which Osborne would be able to get "paper" (the con man's general term for any official document which seems to authenticate the existence of large-scale funds) from a European financial institution. That "paper" would be used by Martin Bakerman, who would set up a company in Mobile and open an account with the victim bank. Bakerman's company would then create the illusion of large-scale trading, through transactions involving Scharf's Leichtenstein-based company, Zeima, AG, and Osborne's European bank. Bakerman would be dealing with a vice-president of the Mobile bank, whom the FBI informant supposedly had "in his pocket". The "paper" used as collateral would, according to Scharf and Osborne, "blow" before the Mobile bank could collect on it.

The same paper could also be used as interim financing for a supply of coffee from Guatemala to Royal Cup Coffee Co. in Birmingham, AL. An initial shipment of around 3,000 bags of coffee would be delivered to Royal Cup as agreed, but a further, larger shipment would disappear en route with the ship reported sunk. The ship instead would be diverted and renamed, the coffee sold to someone else and an insurance claim put in for the whole. (Osborne had pulled off such schemes in the past. He was wanted on two Greek arrest warrants for the illegal diversion in 1978 to the Lebanese coast of a shipment of sugar worth over \$2.5 million. In 1977 he had defrauded an Omani company of \$592,000 in a sophisticated scheme using a fictitious cement shipment in a fictitious ship.)

Osborne also suggested another vehicle they could use to help defraud the Mobile bank. A subsidiary of Osborne's company, Levant African Foundation, had purchased 47,000 lithographs for around \$30,000, but he could produce paperwork authenticating their value at \$4 million. They could present the lithographs to the bank as collateral for a \$2.5 million loan, which would not be repaid. Osborne sent a telex to the Mobile bank about the lithographs, but the defendants were arrested prior to that portion of the scheme going forward.

The case resulted in two trials: Scharf and Bakerman were tried from March 14 to March 28, 1983, and Osborne from June 13 to June 20, 1983. In both trials, excerpts from more than 47 hours of tape-recorded meetings and telephone conversations were played. All defendants were convicted and appealed. Those appeals were affirmed in unpublished opinions.

I was the sole prosecutor. Defense counsel were:

For Defendant Scharf:

Richard D. Horne  
182 St. Francis Street, Suite 300  
Mobile, AL 36602  
(334) 432-4421

For Defendant Bakerman:

Ian Gaston  
P.O. Box 1253  
Mobile, AL 36633  
(334) 433-5585

For Defendant Osborne:

Frank Rubino  
2601 So. Bayshore Drive  
Suite 1400  
Coconut Grove, FL 33133  
(305) 858-5300

7. United States v. Delmont O. Dapremont, Jr., S.D. AL Cr. No. 00-00052. From 1983 to 1997, Dapremont was president and part owner of Coastal Ford, a car dealership in Mobile, AL. Dapremont's partner was Ford Motor Co., and pursuant to an agreement Dapremont had with Ford, the dealership's profits were to be devoted to buying our Ford's interest. But Dapremont had other plans for the dealership's funds. From at least 1993 through 1996, Dapremont siphoned over \$600,000 from the dealership into the account of "DMT & Associates", an entity he concocted purportedly to provide advertising services to Coastal Ford. Dapremont used at least \$366,000 of that money to finance a lavish lifestyle, include paying for a 41-foot Hatteras yacht, remodeling his hunting camp, and purchasing furniture and jewelry for female friends. When a Ford executive nearly uncovered this scheme in 1996, Dapremont aborted it, and then extracted \$46,000 in kickbacks from Coastal Ford's true advertising firm, Kreiger, White, Edeker. Dapremont did not report any of this income on his 1993 through 1996 tax returns, resulting in a tax due and owing of at least \$129,000.

He was indicted for tax evasion and mail fraud. The case was tried for 5 days in July 2000 before Judge Charles R. Butler, Jr. and Dapremont was found guilty and sentenced to prison. He is currently on appeal in the 11<sup>th</sup> Circuit.

I was the sole prosecutor. Lead defense counsel was:

Willie J. Huntley, Jr.  
The Huntley Firm  
708 Government Street  
Mobile, Alabama 36601  
(334) 434-0007

8. United States v. Eddie Reese, S.D. AL Cr. No. 86-00095. Reese was an elected city councilman in Prichard, Alabama, a city which adjoins Mobile to the north. He and his family, which was well-respected, owned and operated the largest funeral home in Prichard. His brother was a football player with the Miami Dolphins.

Reese was charged with racketeering and other offenses arising out of Hobbs Act extortions and the solicitation of bribes for city business. Shortly before trial, I learned that the 'star' witness, who had audio-taped her meetings with, and the extortionate demands of, the defendant, was in the hospital dying of stomach cancer. I quickly arranged for a videotaped deposition to be used as substantive evidence in the criminal trial.

Reese was tried twice. After the first trial, which took place before Judge W. Brevard Hand from January 12 to January 22, 1987, the jury returned a guilty verdict; but when the jury was polled, the 12th juror disavowed the verdict. They were sent back for additional deliberations, returned to the courtroom after several hours, and the foreman again produced a signed verdict of guilty. Once again, the 12th juror said that was not her verdict. A mistrial was declared.

The second trial took place from March 23 to March 27, 1987. This time, the guilty verdict stood. Reese did not appeal. I was the sole prosecutor. The defense lawyer was:

Richard D. Horne  
182 St. Francis Street, Suite 300  
Mobile, AL 36602  
(334) 432-4421

9. United States v. Henry Davenport, S.D. AL Cr. No. 79-00079  
This was the first significant white collar fraud case which I tried. Davenport was a very small, dapper, gentlemanly-looking individual who represented himself to be the administrator of a pension fund for African American beauticians and barbers. He made personal calls on small beauty and barber businesses, soliciting participation in the "pension fund." He gave the participants coupon payment books, and made the rounds monthly collecting the payments. In reality, there was no pension fund, and the payments went directly into his pocket. A number of elderly beauticians and barbers lost their life savings because of his fraud. The case was investigated by the Ala. Department of Securities, and the Postal Inspection Service. It was prosecuted as a mail fraud case and tried before Judge Virgil Pittman either in 1979 or 1980. Davenport was convicted and did not appeal. I was the sole prosecutor. The defense attorney was:

John Lawler  
 Finbohner & Lawler  
 P.O. Box 3085  
 Mobile, Alabama 36652  
 (334) 438-5871

10. United States v. Thomas C. Tobias, S.D. AL. No. 80-00023. This was a short and simple case, but it is significant because it is still, today, cited in opinions concerning the defense of "outrageous government conduct."

In the late 70's and early 80's DEA ran an undercover operation in the form of a chemical supply business. They advertised in "High Times" magazine, and supplied a phone number for contact. The undercover operation was telephoned by Mobile resident Tom Tobias, who inquired about purchasing some chemicals. The DEA agent posing as the chemical sales representative could not figure out what Tobias was trying to make with those chemicals, so he asked him. Tobias admitted that he wanted to make cocaine - but said that all he was really interested in was making money. The agent suggested that he could make PCP much more easily and that there was a market for it in Mobile. The agent gave Tobias the formula for making the drug, and sent him some, but not all, of the chemicals required. All of the chemicals sent could have been easily obtained at any chemical supply house. Tobias called the agent 13 times to get more details on how to make PCP and to obtain his help. A search warrant was executed at Tobias's residence once the manufacturing process was complete.

Tobias elected to try the case without a jury, before Judge W. Brevard Hand. He was convicted, and appealed. The case was affirmed and is reported at 662 F.2d 381 (5th Cir. Unit B 1981). I was the sole prosecutor. The defense attorney was:

W. Gregory Hughes  
 501 Church Street  
 Mobile, AL 36602  
 (334) 433-3671

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

There are numerous significant criminal cases that I handled which ended with guilty pleas. Several that come to mind are:



1. United States v. James B. Newell, S.D. AL Cr. No. 94-00087. Newell was an attorney whose specialty was banking law. he was thoroughly familiar with with the legal requirements surrounding the purchase and sale of banks and bank holding companies. The offenses all arose out of Newell's efforts to establish a new banking entity with operations in Mobile, and to obtain the financing to make that objective possible.

In early 1991, Newell established PBA Financial Corporation (hereinafter PBAFC) to operate as a bank holding company. His objective in forming the holding company was to gain control of two banks, the Peoples Bank, Elba, Alabama (hereinafter the Elba Bank), and the Peoples Bank of Alabama, Centreville, Alabama (hereinafter the Centreville Bank), which had two branches in Mobile, and to merge them into one financial institution, the Peoples Bank, which would be owned by PBAFC.

To meet this objective, it was necessary for Newell to raise enough capital, through the sale of PBAFC stock or through loans, to finance the purchases of the two banks. Alabama securities regulations required that a Confidential Offering Memorandum (COM) be filed with and approved by the State Securities Commission, and given to prospective investors. The COM for PBAFC, which was approved by the State, contained a provision for the sale of \$15,050,000 in stock. The provisions required the sale of a minimum of \$7.8 million worth of stock by January 15, 1991. If the minimum amount was not sold by that date, the COM specified that the offering would be terminated, and all proceeds would be returned to the investors. The COM further provided that if the January 15 minimum sale was reached, PBAFC would be allowed to continue sales until January 31, 1991, when \$11.8 million worth of stock would have to be sold, or the offering would be terminated and all funds returned to investors. On January 29, 1991, Newell, knowing that the stock subscriptions fell far short of the required \$7.8 million, falsely advised the Alabama Securities Commission that PBAFC had obtained stock subscriptions in an amount greater than \$7.8 million but less than \$11.8 million. He obtained an extension of time to March 31, 1991 to raise the \$11.8 million.

During 1990, Newell had approached the A.F.L. - A.G.C. Building Trades Pension Plan, (the Plan), soliciting its investment in PBAFC stock, and was turned down. In early 1991, knowing that the offer should have been terminated for failure to raise \$7.8 million, Newell again solicited an investment from the Plan, and convinced the trustees to invest \$1 million. Newell provided false information to the Plan by representing that he had paid-in subscriptions of approximately \$10 million, and that he had personally invested over \$4.8 million. In fact, Newell had invested no personal funds in PBAFC, and had raised nowhere near \$10 million in paid-in subscriptions.

In March and April, 1991, under Newell's direction, PBAFC purchased approximately 63% of the outstanding stock of PBA Bank Corporation, the holding company for the Centreville Bank. The purchase price was \$7.3 million, with \$3.7 million paid in cash to the six stockholders

who sold their shares, and with \$3.6 million in notes from PBAFC issued to three of the stockholders. Newell controlled the Centreville Bank through PBAFC, and became chairman of the board of that bank. The purchase of the subsidiary holding company and its bank by PBAFC was done without the required Federal Reserve Board approval, and formed the factual basis for conviction on Count Eight. In PBA Bank Corporation's next annual report to the Federal Reserve Board, Newell falsified the list of stockholders to conceal from the Federal Reserve Board the fact that PBAFC had purchased a majority of the stock of PBA Bank Corporation.

The financial needs of PBAFC continued to be pressing. Money was needed to make payments of interest on the \$3.6 million owed to stockholders for the purchase of the Centreville Bank. In addition, PBAFC needed \$3 million to close the purchase of the Elba Bank, and money was also needed to make other interest payments which were due October 1, 1991. In order to make the payments, Newell asked the Centreville Bank to issue a \$275,000 cashier's check to Legg, Mason, Wood & Walker, Inc., the broker which managed that bank's investment portfolio. Newell told the bank that the funds were needed to purchase bonds. Newell transferred the \$275,000 from the Centreville Bank to PBAFC's account, and used it to pay overdue interest. Over a year later, in March, 1993, Newell returned the \$275,000 to the bank at a time when the bank was undergoing an examination by the State Banking Department and the FDIC. The bank lost the use of the \$275,000 for 18 months, as well as the interest that would have been earned by investing that sum.

In February, 1992, Newell orchestrated a deal for PBAFC to purchase 83% of the shares of Peoples Bancshares, Inc., the holding company of the Elba Bank, for approximately \$3 million. Because PBAFC had only raised \$1.5 million in capital, Newell arranged a fraudulent loan from the Centreville Bank, which PBAFC controlled, to make up the shortfall. Newell knew that banking regulations prohibited PBA Bank from loaning money to its own holding company. He therefore caused the loan documents to be made in the name of Peoples Bancshares, Inc., without the knowledge or consent of the officers or directors of Peoples Bancshares, Inc. Further, Newell forged the loan documents with the signature of the chairman and CEO of Peoples Bancshares. The proceeds of the loan were disbursed by cashier's check directly to the owners of the stock being purchased. Supposedly, the collateral given for the \$1.5 million loan was 100% of the stock of the Elba Bank. At the time that Newell transacted the fraudulent loan, he knew that 100% of the stock of the Elba Bank was pledged as collateral on a loan to Peoples Bancshares, Inc. from Central Bank of the South in Birmingham, and that the loan he was consummating from the Centreville Bank was actually unsecured.

In September, 1992, the \$1.5 million loan became due. Newell made a \$10,000 principal payment, and executed more forged loan documents for a fraudulent \$1,490,000 loan to make up the balance. This transaction forms the factual basis supporting the conviction on Count One.

Although the two banks, the Centreville Bank and the Elba Bank, began operating as the merged Peoples Bank in January, 1993, R2-28, Newell filed Articles of Merger, dated March 1, 1993, with the Alabama Secretary of State on March 29, 1993. Newell forged the signatures of officials of both banks on the filed documents.

On that same date, March 29, 1993, the FDIC and the State Banking Department began an unannounced examination of the bank. Newell had expected that the examination would take place several months later. The examiners questioned the \$1,490,000 loan because it was past due, and because the merger of the banks had made apparent the violation of the regulation which prohibited a bank from loaning money to its own holding company. The examiners also questioned the collateral on the loan, since the number of shares which were pledged, and which reportedly represented 100% of the shares of Peoples Bank, Elba., did not match the number of shares that the bank had reported as outstanding when its records were examined a year earlier. Because of the problems with the loan, Newell advised the bank examiners that the loan would be paid out.

In order to pay off the loan, Newell created B & B Investments, Inc., a fraudulent company set up for the sole purpose of obtaining a loan from the newly-merged Peoples Bank to help pay off the \$1,490,000 loan. Newell had bank employees prepare papers for a \$1.38 million loan to B & B Investments, Inc., and forged all signatures on the papers. Newell took those loan proceeds and combined them with \$110,000 from the bank employees' ESOP Plan, of which he was the trustee, to pay off the loan.

In early 1992, within days of PBAFC's purchase of the Elba Bank holding company, the Elba Bank acquired from the Resolution Trust Corporation four Mobile branches of the defunct Jefferson Federal Savings and Loan. In order to get regulatory approval from the FDIC and the State Banking Department for the purchase of the branches, the Elba Bank had to commit to increase its capital by \$825,000. Because Newell did not have access to the money to make that capital injection, he falsely informed bank personnel that the injection had been made in the form of a security, and caused the bank's books to reflect the infusion of capital. In order fund that book entry, on December 15, 1992, Newell caused certain securities belonging to the Centreville Bank to be sold for \$1,203,320.65. He had the funds wire-transferred from the Legg, Mason brokerage firm directly to PBAFC's account at Colonial Bank. On the same day, PBAFC wired \$825,000 of these funds to an account of the Elba Bank at First Tennessee Bank. Newell falsely informed Centreville Bank employees that the funds had been transferred to that bank's money market account at Legg, Mason. Based on that information, the transaction was recorded on the Centreville Bank's books as money due from Legg, Mason. In early 1993, because Newell personally maintained the records of the bank's money market account, a bank employee called Legg, Mason to find out how much interest to post on the bank's books from that account, and was informed that the money had been wired directly to PBAFC. When Newell was asked about these funds, he

falsely replied that the funds had been transferred to the Central Bank of the South to provide additional collateral on a Peoples Bancshares loan.

At the end of March, 1993, when the state and federal bank examiners were in the bank, Newell attempted to cover the missing funds on the bank's books by returning \$473,320.65 to the bank from PBAFC. Newell instructed bank employees to account for the remaining \$730,000 balance in the "due from Legg, Mason" account by recording a \$730,000 dividend to PBAFC. No dividend was ever approved by the bank's board of directors.. (Indeed, since PBAFC was not shareholder of the bank, no dividend to PBAFC could be legally declared.)

Newell pleaded guilty to eight counts of a ten count indictment charging him with various bank related frauds. A contested sentencing hearing was held on February 10, 1995. Newell was sentenced to 50 months imprisonment and ordered to pay \$2,000,000.00 in restitution.

I was the sole prosecutor in the case. The defense attorney was:

Arthur Madden  
Madden & Soto  
465 Dauphin Street  
Mobile, Alabama 36602  
(334) 532-0380

2. United States v. Kenneth W. Canton, S.D. AL Cr. No. 96-00195-CB. Canton was an insurance broker who was investigated by the FBI and IRS for offenses arising out of his operation of an offshore insurance company and the tracing of funds he made from that operation. Canton was licensed as an insurance agent in 1967. In 1988, Canton received an insurance broker's license and a surplus lines broker's license from the state of Alabama. That same year he formed All South Insurance Broker's Inc., (All South), an insurance brokerage company. Canton served as president of All South. In 1989, Canton had an offshore management company incorporate Gulfcrest, Ltd., in Montserrat, West Indies. He then transferred all outstanding stock of All South to Gulfcrest. Canton acted as attorney-in-fact for Gulfcrest.

In October, 1989, Gulfcrest purchased a Turks and Caicos Islands (T&C) insurance company, which later changed its name to Southern Continental Insurance Company, Ltd. (SCIC). Canton acted as attorney-in-fact for SCIC. In 1989, its first year of operation, the insurance company reported earned premium income of \$616,303 and total stockholder's equity of \$658,691. (Financial Statement as of December 31, 1989). In the first three months of 1990, the insurance company had earned premium income of \$398,270, but now had total stockholder's equity of \$4,004,006. By far, the largest asset on the company's balance sheet was \$3 million reflected as "Certificates of Deposit." The notes to that financial statement state, The company owns three (3) \$1,000,000 certificates of deposit issued by Maston

[sic] Plan Company, Inc. Mobile, Alabama. Each certificate of deposit is dated March 30, 1990, bears an interest rate of 6% and matures on September, 1990." Canton obtained the certificates listed on the financial statement from Sam Vrachalus at the Mason Plan, a local Mobile finance company. Canton had approached Vrachalus and proposed that The Mason Plan issue the certificates in exchange for a \$750,000 deposit and a promissory note in the amount of \$2,250,000. In other words, the certificates were to be backed by the cash deposit, with the promissory note issued in exchange for the certificates as a "paper for paper" transaction.

On April 12, 1990, Canton provided Vrachalus with a cashier's check for \$500,000 as part of the \$750,000 cash deposit. On that same date, the certificates were prepared with the March 30 date applied. Canton provided the remaining \$250,000 to Vrachalus on May 3, 1990 in the form of a check drawn on the insurance company's bank account made payable to Gulfcrest. A \$2,250,000 promissory note was given to Vrachalus by Canton, also dated March 30. The promissory note was in the name of Gulfcrest, Ltd., was due September 6, 1990, bore an interest rate of 6%, and was signed by Canton as attorney-in-fact.

In 1990, new insurance laws and regulations became effective in the T&C which required all insurance companies to be licensed. Under those laws and regulations, any company applying for an insurance license had to satisfy the T&C regulators that the readily available assets of the company were sufficient to meet liabilities at all times. The Superintendent of Insurance was vested with the discretion to determine what assets were acceptable in making that determination.

In June, 1990, Canton provided the T&C Superintendent of Insurance with an application for an insurance license on behalf of SCIC. Included in that application was the March 30, 1990 SCIC financial statement showing the \$3,000,000 certificates of deposit as a major asset. There was no indication on the financial statement that the certificates were actually backed by \$750,000 in cash and a promissory note executed by the insurance company's parent company.

Between July 27, 1990 and August 2, 1990, Canton, on behalf of Gulfcrest, Ltd., sold SCIC to Gary Ledbetter. Pursuant to the purchase agreement, Gulfcrest received back from SCIC the great majority of the assets of SCIC, including the three \$1,000,000 Mason Plan certificates of deposit. Included in the assets that Gulfcrest received was more than \$1,500,000 in funds. Canton used \$500,000 of that money for personal expenses, but did not report any of that amount as income on his 1990 income tax return, which he signed, under penalty of perjury, and filed on or about April 15, 1991. Because Canton had personally injected capital of \$388,126 into SCIC which had not previously been returned to him, that amount can be applied to the \$500,000 income he received personally from the sale of SCIC in 1990, leaving an unreported taxable income of \$111,874.

By letter dated July 27, 1990, the T&C Superintendent of Insurance wrote Canton requesting further details concerning the information

presented in SCIC's application for an insurance license. One of the items requested was: "Please provide details of Maston [sic] Plan Company, Inc.". Canton responded to these inquiries in a letter dated which contained false and misleading information about SCIC and its assets.

Having sold SCIC, in August, 1990, Canton made arrangements to start up another offshore insurance business. He had the name of another T&C insurance company changed to Western American Assurance Company, Ltd. (WAACO), and in September, arranged for the acquisition of WAACO by Hormley Investment, Inc., (Hormley), a British Virgin Islands company whose stock was held by Elfin Trust Co., Guernsey, Channel Islands as trustee for the Kevin and Kresley Settlement. Canton's children, Kevin and Kresley Canton, were the beneficiaries of this trust. Canton acted as attorney-in-fact for both WAACO and Hormley. At the end of September Canton signed and submitted an application for WAACO to be licensed in the T&C. WAACO commenced business on October 1, 1990.

Part of the requirements for a non-admitted alien company to do insurance business in Alabama was that \$750,000 be held in trust for the payment of claims. Canton entered into a trust agreement with The Mason Plan for the Mason Plan to hold the \$750,000, already on deposit there, in trust per these requirements. In December, 1990, Canton obtained from Vrachalus at The Mason Plan a \$2,000,000 certificate of deposit in the name of WAACO, in the same manner as he had obtained the \$3 million in certificates for SCIC. This certificate was dated December 11, 1990 and bore an interest rate of 8% to be paid on June 11, 1991. As collateral for the certificate, Canton signed a \$2,000,000 promissory note to The Mason Plan on behalf of Hormley, bearing an interest rate of 8% to be paid on June 11, 1991. WAACO's financial statement of December 31, 1990 reported a total stockholder's equity of \$2,020,369. By far, the largest asset on the company's balance sheet was \$2 million reflected as "Certificates of Deposit." The notes to that financial statement state, "The company owns a certificate of deposit in the amount of \$2,000,000 issued by Mason Plan Company, Inc. Mobile, Alabama, U.S.A.. Mason Plan Company, Inc. is a chartered industrial bank licensed in the State of Alabama. The certificate bears interest at the rate of 6% per annum. It matures on June 11, 1991." There is no indication on the financial statement that the certificate was collateralized by a note executed by WAACO's parent company. Canton had that financial statement submitted to the T&C as part of the application process for WAACO.

Although no license was ever issued to WAACO by the T&C, the company was allowed to operate while the application was pending. The application remained in a pending status throughout 1991 and into 1992 during which time the regulators continued to request further information about WAACO. The Alabama Department of Insurance (ADOI) started looking into WAACO in 1991. Canton provided the December, 1990 financial statement, and later the December 1991 financial statement of WAACO, which still listed the \$2 million certificate, to ADOI as well as to

the T&C. Ultimately, in June, 1992, the ADOI issued a cease and desist order against WAACO. The company ceased doing business, and wound up its affairs later in 1992 with all claims ultimately being paid and no known loss to any policyholders of WAACO.

Canton was charged with tax offenses and mail and wire fraud. In order to present testimony concerning many of the foreign transactions involved, I, as the sole prosecutor, and the defense attorney, took depositions of witnesses in the Netherlands and Guernsey, the Channel Islands. I also had to make arrangements for witnesses to be available from Panama, the British Virgin Islands and the Turks & Caicos Islands.

Canton pleaded guilty to one count of mail fraud and one count of filing a false income tax return. His attorney was:

Dan Guthrie  
2900 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270-2102  
(214) 571-9797

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

**Since I have been in public service during my entire professional career, I have no expectations of any such income.**

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

**I will keep track of all personal and family investments and business relationships and will follow the ethical guidelines of the Code of Conduct for United States Judges in regard to those investments and relationships.**

**I will make sure that I do not handle, as a judge, any criminal or civil case which was pending in the United States Attorney's Office during my employment there.**

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**No.**

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**See attached Financial Disclosure Report**

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for).

**See attached Net Worth Statement**



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6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**I have never held a position or played a role in any political campaign.**

AO-10 (a)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Granade, Callie V.	<b>2. Court or Organization</b> U.S. District Court SDAL	<b>3. Date of Report</b> 08/04/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)	<b>5. Report Type (check type)</b> X Nomination, Date 08/02/2001 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 08/02/2001
<b>7. Chambers or Office Address</b> U.S. Courthouse 41 St. Joseph Street Mobile, Alabama 36602	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.		

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1. Executor	Estate of Milton H. Smith, II
2. Member of Board of Directors	Reyside Academy
3. Trustee	Family trust

**J. AGREEMENTS** (Reporting individual only; see pp. 14-16 of instructions.)

DATE	DUTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME
NONE (No reportable non-investment income.)		(Yours, not spouse's)
1. 12-31-99	Stone, Granade & Crosby, P.C.	
2. 12-31-00	Stone, Granade & Crosby, P.C.	
3. 7-31-01	Stone, Granade & Crosby, P.C.	
4. 12-31-99	First Community Bank	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Granado, Callie V.	08/04/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	NONE	Exempt
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	NONE	Exempt	
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	AmSouth Bank (S)	mortgage on real property	E
2	First Community Bank (S)	unsecured loan	K
3			
4			
5			
6			

\* VAL. CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Granado, Callie V.		Date of Report 08/04/2001	
<i>Includes those of spouse and dependent children. See pp. 36-54 of Instructions.</i>					
<b>VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions</b>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-F)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<b>NONE</b> (No reportable income, assets, or transactions.)					
1 Southwest Bancshares stock	F	Dividend	P1	Q	Exempt
2 First Community Bank accounts	D	Interest	M	T	Exempt
3 SouthTrust Bank accounts	A	Interest	J	T	Exempt
4 AmSouth Bank accounts	B	Interest	M	T	Exempt
5 First Northwest Florida Bank account	A	Interest	J	T	Exempt
6 Army Aviation Center Federal Credit Union account	A	Interest	K	T	Exempt
7 1/3 interest in house & lot, Mary Esther, FL	C	Rent	L	Q	Exempt
8 1/3 interest in Virginia Properties, LLC		None	K	S	Exempt
9 204 interest in Britton Point LLC	E	Distr & Rent	L	S	Exempt
10 Keystone Provident Life Insurance Co. Annuity	B	Interest	K	T	Exempt
11 Morgan Stanley brokerage account #1					Exempt
12 -Active Assets Money Mkt.	D	Interest	N	T	Exempt
13 -Microsoft Corp. common stock		None	M	T	Exempt
14 -Pfizer, Inc. common stock	D	Dividend	N	T	Exempt
15 -Procter & Gamble common stock	A	Dividend			Exempt
16 -Eristol Myers Squibb common stock	B	Dividend			Exempt
17 -BP Amoco common stock	C	Dividend	M	T	Exempt
<b>1</b> Inv/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Granade, Callie V.		Date of Report 08/04/2001	
(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)					
<b>VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions</b>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value: (4) Gain: (5) Identity of Month: Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)					
18 -General Electric common stock	D	Dividend	N	T	Exempt
19 -Johnson & Johnson common stock	A	Dividend	K	T	Exempt
20 -Marsh & McLennan Cos. common stock	B	Dividend	L	T	Exempt
21 -National City Corp. common stock	C	Dividend	L	T	Exempt
22 -Nokia common stock	B	Dividend			Exempt
23 -AOL common stock		None			Exempt
24 -Advanced Micro Devices common stock		None			Exempt
25 -BMC Corp. Mass. common stock		None	M	T	Exempt
26 -Cisco Sys. Inc. common stock		None			Exempt
27 -AT&T common stock	A	Dividend			Exempt
28 -Pepsico common stock		None			Exempt
29 -Sun Microsystems common stock		None	K	T	Exempt
30 -American International Group common stock	A	Dividend	K	T	Exempt
31 -Anheuser Busch common stock	A	Dividend	K	T	Exempt
32 -Applied Materials common stock		None	K	T	Exempt
33 -Citigroup Inc. common stock	A	None	K	T	Exempt
34 -Electric Data Systems Corp. common stock	A	Dividend	K	T	Exempt
1 Inv/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001 or more)					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more)					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (U=Book Value V=Other W=Estimated)					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Granade, Callie V.		Date of Report 08/04/2001	
VII. Page 3 INVESTMENTS and TRUSTS— income, value, transactions <small>(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-F)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (G-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) (3) (4) (5) Date Value Gain Identity of Month Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions)					
35 - Eli Lilly common stock	A	Dividend	L	T	Exempt
36 - Enron Corp. common stock	A	Dividend	K	T	Exempt
37 - Fifth Third Bancorp Ohio common stock	A	Dividend	K	T	Exempt
38 - McData Corp. common stock		None	J	T	Exempt
39 - Novartis AG common stock	A	Dividend	K	T	Exempt
40 - SunTrust Bank common stock	A	Dividend	K	T	Exempt
41 - Texas St. Hgtr Educ. Bond	A	Interest			Exempt
42 - Georgia St. Hsg. Fin Auth Rev Single Family Mtg Ser C	A	Interest	J	T	Exempt
43 - Northern KY Univ Rev Ref Cons Educ Bldgs SER I Bond	B	Interest	K	T	Exempt
44 - Honolulu Hawaii city & cnty OIG Genl Oblig Bond	B	Interest	K	T	Exempt
45 - District Columbia Genl Oblig Defeased Ser B Bond	B	Interest	K	T	Exempt
46 - Alabama Judicial Bldg AU Rev Bond		None	L	T	Exempt
47 - Alabama Wtr Pollution Ctl Auth Rev Revolving Fund Ser B	B	Interest	K	T	Exempt
48 - Lauderdale Cnty & Florence, AL Health Rev. Bond	B	Interest	K	T	Exempt
49 - Owensboro, KY Electric Light Power Rev Bond	B	Interest			Exempt
50 - Seaviver Maritime Def. Interest Debenture zero coupon		None	L	T	Exempt
51 - Hartford CMC annuity		None	L	T	Exempt
1 Inc/Gen Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Granade, Callie V.		Date of Report 08/04/2001	
<b>VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  Place "00" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Asset Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, margin, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month: Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
52 Salomon Smith Barney IRA	C	Distr/Div /In	b	7	Exempt
53 -Dreyfus Liquid Assets					Exempt
54 -Core Laboratories common stock					Exempt
55 -AOL Time Warner common stock					Exempt
56 -KST Liberty Media Group common stock					Exempt
57 -Alkermes common stock					Exempt
58 -American Express common stock					Exempt
59 -Amer Int'l Group common stock					Exempt
60 -Angeles common stock					Exempt
61 -Bank One common stock					Exempt
62 -Cablevision Systems common stock					Exempt
63 -Cablevision Rainbow Media Group common stock					Exempt
64 -Chiron Corp. common stock					Exempt
65 -Cisac common stock					Exempt
66 -Cirrus Logic common stock					Exempt
67 -Coca Cola common stock					Exempt
68 -Comcast common stock					Exempt
1 Incl/Date Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

Name of Person Reporting Granade, Callio V.		Date of Report 08/04/2001							
<b>FINANCIAL DISCLOSURE REPORT</b> <i>(Includes those of spouse and dependent children. See pp. 16-34 of Instructions.)</i>									
<b>VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions</b>									
A. Description of Assets (including trust assets)  <i>Please "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-W)	(2) Value Method Code (Q-W)	(1) Type (e.g. buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
					(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable increases, or transactions.)									
69 -Walt Disney common stock					Exempt				
70 -Exxon common stock					Exempt				
71 -Exxon Mobil common stock					Exempt				
72 -Federal National Mortgage common stock					Exempt				
73 -Forest Laboratories common stock					Exempt				
74 -General Electric common stock					Exempt				
75 -Genzyme Corp. common stock					Exempt				
76 -Gillette common stock					Exempt				
77 -Grant Ridge common stock					Exempt				
78 -Home Depot common stock					Exempt				
79 -Household Int'l common stock					Exempt				
80 -Idex Pharmaceuticals common stock					Exempt				
81 -Intel common stock					Exempt				
82 -Isis Pharmaceuticals common stock					Exempt				
83 -Johnson & Johnson common stock					Exempt				
84 -L 3 Communications Holdings common stock					Exempt				
85 -Maxtor common stock					Exempt				
<b>1</b> Use/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Other (Col. C2) U=Book Value V=Other W=Estimated									



<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Granade, Callie V.	Date of Report 08/04/2001
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**VII. Page 6 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "00" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Chain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
86 -McDonalds common stock					Exempt				
87 -Merck common stock					Exempt				
88 -Microsoft common stock					Exempt				
89 -Pepsico common stock					Exempt				
90 -Quantum Corp. DLT & Storage common stock					Exempt				
91 -Sicor common stock					Exempt				
92 -Texas Instruments common stock					Exempt				
93 -Tyco Int'l. common stock					Exempt				
94 -UnitedHealth Group common stock					Exempt				
95 -Weatherford Int'l. common stock					Exempt				
96 -Wells Fargo common stock					Exempt				
97 1/12 mineral rights, parcel in Washington Cnty, AL		None	J	W	Exempt				
98 40% interest in Daphne Offices, LLC	D	Rent	L	U	Exempt				
99 12.5% interest in office building, Bay Minette, AL	C	Rent	K	Q	Exempt				
100 25% interest in SGCs8 Daphne Development partnership		None	J	W	Exempt				
101 43% interest in Stone, Granade & Crosby P.C.			J	U	Exempt				
102 36% interest in South Baldwin Offices, LLC	D	Rent	L	Q	Exempt				
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Granade, Callie V.				Date of Report 08/04/2001			
<b>VII. Page 7 INVESTMENTS and TRUSTS— income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>									
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(Q)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
103 1/3 int. real estate parcel #1 in Washington Cnty, AL		None	K	W	Exempt				
104 1/3 int. real estate parcel #2 Washington Cnty, AL		None	J	W	Exempt				
105 Morgan Keegan SEP/IRA	A	Div. & Int.	K	T	Exempt				
106 -Buckeye Technologies common stock					Exempt				
107 -Energy South common stock					Exempt				
108 -Florida East Coast Inds. common stock					Exempt				
109 -St. Joe Paper common stock					Exempt				
110 -Bedford Money Market					Exempt				
111 Salomon Smith Barney SEP/IRA	D	Div & Int.	M	T	Exempt				
112 -Dreyfus Liquid Assets					Exempt				
113 -Amdocs Ltd. common stock					Exempt				
114 -Tycom, Ltd. common stock					Exempt				
115 -Core Laboratories common stock					Exempt				
116 -AOL Time Warner common stock					Exempt				
117 -AT&T Liberty Media Group common stock					Exempt				
118 -Alkermes common stock					Exempt				
119 -American Express common stock					Exempt				
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 H2=\$5,000,001 or more <b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Granade, Callie V.	Date of Report 08/04/2001
	(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

VII. Page 8 INVESTMENTS and TRUSTS— income, value, transactions

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
120 -Amer Int'l Group common stock					Exempt				
121 -Angen common stock					Exempt				
122 -AXA S.A. common stock					Exempt				
123 -BASF common stock					Exempt				
124 -BP Amoco common stock					Exempt				
125 -Bank One common stock					Exempt				
126 -CRHYC common stock					Exempt				
127 -Cablevision Systems common stock					Exempt				
128 -Cablevision Rainbow Media Grp. common stock					Exempt				
129 -Canon common stock					Exempt				
130 -Chiron common stock					Exempt				
131 -Cisco common stock					Exempt				
132 -Cirrus Logic common stock					Exempt				
133 -Coca Cola common stock					Exempt				
134 -Colt Telecom common stock					Exempt				
135 -Comcast common stock					Exempt				
136 -Walt Disney common stock					Exempt				
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Granade, Callie V.	Date of Report 08/04/2001
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

**VII. Page 9 INVESTMENTS and TRUSTS— income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  Place "00" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
137 -Elan Corp. common stock					Exempt				
138 -Endesa SA common stock					Exempt				
139 -Enron common stock					Exempt				
140 -Exxon Mobil common stock					Exempt				
141 -Federal National Mortgage common stock					Exempt				
142 -Forest Laboratories common stock					Exempt				
143 -General Electric common stock					Exempt				
144 -Genzyme common stock					Exempt				
145 -Gillette common stock					Exempt				
146 -GlaxoSmithKline common stock					Exempt				
147 -Grant Prideco common stock					Exempt				
148 -Groupe Danone common stock					Exempt				
149 -Grupo Televisa SA common stock					Exempt				
150 -HSBC Holdings common stock					Exempt				
151 -Home Depot common stock					Exempt				
152 -Hong Kong & China Gas common stock					Exempt				
153 -Household Int'l common stock					Exempt				
1. Ino Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000					
2. Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more					
3. Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market						

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Granade, Callie V.	Date of Report 08/04/2001

**VII Page 10 INVESTMENTS and TRUSTS-- income, value, transactions** *(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
154 -Idec Pharmaceuticals common stock					Exempt				
155 -ING Groep common stock					Exempt				
156 -Intel common stock					Exempt				
157 -Ireland Bank common stock					Exempt				
158 -Johnson & Johnson common stock					Exempt				
159 -Koninklijke Philips Electronics common stock					Exempt				
160 -L 3 Communications common stock					Exempt				
161 -Maxtor common stock					Exempt				
162 -McDonalds common stock					Exempt				
163 -Merck common stock					Exempt				
164 -Mettler Toledo Int'l common stock					Exempt				
165 -Microsoft common stock					Exempt				
166 -Nestle common stock					Exempt				
167 -News Ltd common stock					Exempt				
168 -Nippon Telephone & Telegraph common stock					Exempt				
169 -Nokia common stock					Exempt				
170 -Nomura Securities common stock					Exempt				
<b>1</b> Incl/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$30,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Granade, Callie V.		Date of Report 08/04/2001	
(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)					
<b>VII. Page 11 INVESTMENTS and TRUSTS— income, value, transactions</b>					
A. Description of Assets (including trust assets)  <i>Place "XX" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month- Code Code Code Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
171 -Nortel Networks common stock					Exempt
172 -Novartis common stock					Exempt
173 -Novo-Nordisk common stock					Exempt
174 -Pepsico common stock					Exempt
175 -Quantum Corp. DL7 & Storage common stock					Exempt
176 -PSA Security common stock					Exempt
177 -Royal Dutch Petroleum common stock					Exempt
178 -SK Telecom common stock					Exempt
179 -San Paolo IMI common stock					Exempt
180 -SAP Aktengesellschaft common stock					Exempt
181 -Sekisui House common stock					Exempt
182 -Sicor common stock					Exempt
183 -SNE common stock					Exempt
184 -Taiwan Semiconductor common stock					Exempt
185 -Telefonica common stock					Exempt
186 -Texas Instruments common stock					Exempt
187 -Toronto Dominion Bank common stock					Exempt
<b>1</b> Incl/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Granade, Callie V.				Date of Report 08/04/2001			
<b>VII Page 12 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "XX" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
188 -Tyco Int'l common stock					Exempt				
189 -Tycom Ltd common stock					Exempt				
190 -UnitedHealth Grp. common stock					Exempt				
191 -Verity common stock					Exempt				
192 -Vodafone Grp. common stock					Exempt				
193 -Wal-Mart de Mexico common stock					Exempt				
194 -Weatherford Int'l common stock					Exempt				
195 -Wells Fargo common stock					Exempt				
196 GE Life & Annuity		None	K	T	Exempt				
197 Morgan Stanley brokerage account #2					Exempt				
198 -Cisco common stock		None	J	T	Exempt				
199 -EMC Corp common stock		None	J	T	Exempt				
200 -MData Corp common stock		None	J	T	Exempt				
201 -Sun Microsystems common stock		None	J	T	Exempt				
202									
203									
204									
1 Inco/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Granade, Callie V.	Date of Report 08/04/2001
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**SECTION HEADING.** (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

**PART 3. NON-INVESTMENT INCOME (cont'd.)**

Line	Date	Source and Type	Gross Income
5	12-31-00	First Community Bank	
6	7-31-00	Southwest Bancshares, Inc.	



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Granade, Callie V.	Date of Report 08/04/2001

**II. ADDITIONAL INFORMATION OR EXPLANATIONS.**

(Indicate part of report)

Part I - Trustee position -- not reported in Part VII because filer has no beneficial interest and no control of assets.

Part VII Line 1: Appraisal as of 12-31-00

Part VII Line 7: Appraisal dated August 2000

Part VII Line 8: Virginia Properties, LLC owns 40 acres of real estate in Baldwin County, Alabama, assessed for tax purposes at a value of \$64,000; estimated actual value is \$148,000.

Part VII Line 9: Britton Point, LLC owns real estate in Baldwin County, Alabama purchased in 1998 for \$500,000.00.

Part VII Line 98: Daphne Offices, LLC owns an office building in Daphne, AL. The net worth of the LLC at end of year 2000 was \$204,000, or \$81,600 for a 40% share

Part VII Line 99: office building in Bay Minette appraised in 2001 at \$270,000; 12/5% interest value is therefore \$33,750.

Part VII Line 100: Stone, Granade, Crosby & Blackburn Daphne Development is a de jure partnership which owns a lot in Daphne, AL. Estimated value of the lot, based on offers to purchase, is \$25,000. The 1/4 interest is therefore estimated to be worth \$6,250.

Part VII Line 101: income from Stone, Granade & Crosby, P.C. is earned income and is reported under Part XIII. The book value of the law firm at the end of 2000 was \$22,652, and the 43% interest is therefore valued at \$9,740.

Part VII Line 102: South Baldwin Offices, LLC, owns an office building and lot in Foley, AL with a 2001 appraised value of \$210,000/ The value of the 36% interest is therefore \$75,600.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Granade, Callie V.	08/04/2001

**X. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Callie V. Granade Date 8/4/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

**CALLIE VIRGINIA SMITH GRANADE  
FRED KING GRANADE**

**FINANCIAL STATEMENT  
NET WORTH AS OF APRIL 30, 2001**

Provide a complete, current financial net worth statement which itemizes in detail all assets, (including bank accounts, real estate, securities, trusts, investments, and other financial holdings), all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	207	532	55	Notes payable to banks -- secured	25	463	48
U.S. Government securities -- add schedule	--			Notes payable to banks - unsecured	--		
Listed securities -- add schedule	1,350	353	90	Notes payable to relatives	--		
Unlisted securities -- add schedule	2,381	662	50	Notes payable to others	--		
Accounts and notes receivable:	--			Accounts and bills due	--		
Due from relatives and friends	--			Unpaid income tax	--		
Due from others	--			Other unpaid tax and interest	--		
Doubtful	--			Real estate mortgages payable -- add schedule	194	017	80
Real estate owned -- add schedule	862	660	00	Chattel mortgages and other liens payable	--		
Real estate mortgages receivable	--			Other debts -- itemize:	--		
Autos and other personal property	120	000	00				
Cash value -- life insurance	27	625	44				
Other assets -- itemize:							
LLC ownership interest -- see schedule	275	600	00				
Bonds -- see schedule	271	606	25				
Money Market accts, retirement acct. & annuities -- see schedule	1,229	956	64	<b>Total liabilities</b>	<b>219</b>	<b>481</b>	<b>28</b>
				<b>Net Worth</b>	<b>6,507</b>	<b>776</b>	<b>50</b>
<b>Total Assets</b>	<b>6,727</b>	<b>179</b>	<b>28</b>	<b>Total Liabilities and Net Worth</b>	<b>6,727</b>	<b>257</b>	<b>70</b>
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor	16	974	00	Are any assets pledged? Add schedule	No		
On leases or contracts	--			Are you a defendant in any suits or legal actions?	No		
Legal Claims	--			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	--						
Other special debt	--						

**SCHEDULE OF ANNUITIES, MONEY MARKET ACCOUNTS,  
RETIREMENT ACCOUNTS AND IRAs**

<b>Description</b>	<b>Value on 4/30/01</b>	<b>Owned by</b>
Hartford CRC Annuity.	\$ 58,759.64	CVSG
Morgan Stanley Dean Witter Money Market Account	\$ 757,711.38	CVSG
First Community Bank IRA	\$ 15,794.72	FKG
First Community Bank IRA	\$ 2,654.66	FKG
Morgan Keegan IRA/SEP account	\$ 32,632.74	FKG
Salomon Smith Barney SEP account	\$ 209,132.46	FKG
General Electric Annuity	\$ 19,858.75	FKG
Thrift Savings	\$ 27,412.29	CVSG
Roth IRA – First Community Bank	\$ 2,000.00	TRG
Roth IRA – First Community Bank	\$ 2,000.00	MSG
Roth IRA – First Community Bank	\$ 2,000.00	JKG
<b>TOTAL</b>	<b>\$ 1,229,956.64</b>	

**SCHEDULE OF LISTED SECURITIES**

<b>Stock</b>	<b>Number of shares</b>	<b>Value on 4/30/01</b>	<b>Owned by</b>
General Mills	201	\$ 7,921.41	FKG
BP	2648	\$ 143,203.84	CVSG
EMC Corp. Mass	5145	\$ 203,742.00	CVSG
General Electric	5216	\$ 253,132.48	CVSG
Johnson & Johnson	222	\$ 21,418.56	CVSG
Marsh & McLennan	560	\$ 54,006.40	CVSG
MCDATA Corp	189	\$ 4,314.87	CVSG
Microsoft	2417	\$ 163,751.75	CVSG
National City Corp.	2798	\$ 76,133.58	CVSG
Pfizer	9767	\$ 422,911.10	CVSG
<b>TOTAL</b>		<b>\$1,350,535.90</b>	

**SCHEDULE OF UNLISTED SECURITIES**

<b>Stock</b>	<b>Number of shares</b>	<b>Value on 4/30/01</b>	<b>Owned by</b>
Southwest Bancshares	4445	\$1,406,842.50	CVSG
Southwest Bancshares	770	\$ 243,705.00	FKG
Southwest Bancshares	770	\$ 243,705.00	TRG
Southwest Bancshares	770	\$ 243,705.00	MSG
Southwest Bancshares	770	\$ 243,705.00	JKG
<b>TOTAL</b>		<b>\$ 2,381,662.50</b>	

## SCHEDULE OF REAL ESTATE

Description	Value on 4/30/01	Owned by
1/3 interest in house and lot in Mary Esther, FL	\$ 76,660.00	CVSG
Residence on 51 acres near Bay Minette, AL	\$ 720,000.00	FKG & CVSG
1/3 interest in approx. 220 acres in Washington County, AL	\$ 25,000.00	FKG
1/3 interest in lot, Chatom, AL	\$ 1,000.00	FKG
¼ undivided interest in lot in Daphne, AL	\$ 7,000.00	FKG
12.5% interest in office building in Bay Minette, AL	\$ 33,000.00	FKG
<b>TOTAL</b>	<b>\$ 862,660.00</b>	

## SCHEDULE OF INTERESTS IN LIMITED LIABILITY COMPANIES

Description	Value on 4/30/01	Owned by
1/3 interest in Virginia Properties, L.L.C.	\$ 40,000.00	CVSG
20% interest in Britton Point, L.L.C.	\$ 70,000.00	CVSG
36% interest in South Baldwin Office, L.L.C.	\$ 75,600.00	FKG
40% interest in Daphne Offices, L.L.C.	\$ 90,000.00	FKG
<b>TOTAL</b>	<b>\$ 275,000.00</b>	

## SCHEDULE OF MUNICIPAL AND CORPORATE BONDS

Description	Value on 4/30/01	Owned by
Ga. State Housing Financial Auth.	\$ 41,012.50	CVSG
Northern Kentucky Univ. Rev.	\$ 15,225.00	CVSG
Honolulu City and County	\$ 20,900.00	CVSG
Distr. Columbia Gen'l Oblg.	\$ 16,012.50	CVSG
Ala. Judicial Bldg. Auth.	\$ 93,968.75	CVSG
Ala. Water Ch. Auth.	\$ 20,300.00	CVSG
Lauderdale County & Florence, Ala.	\$ 24,500.00	CVSG
Seariver Maritime Def.	\$ 70,687.50	CVSG
<b>TOTAL</b>	<b>\$ 271,606.25</b>	

## REAL ESTATE MORTGAGE SCHEDULE

April 30, 2001: \$194, 017.80 payable to First Community Bank, Chatom, Alabama, and secured by residence near Bay Minette, Alabama

## III. GENERAL (PUBLIC)

An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

**Although the Code of Professional Responsibility has been superceded by the Model Rules of Professional Conduct, the ethical requirement is still extant in Rule 6.1 on Voluntary Pro Bono Publico Service.**

**Because I have spent my entire legal career in public service as a federal prosecutor, I have not fulfilled this responsibility in the manner envisioned by the Model Rules. Since 1997 I have been a member of a committee of a Alabama Law Foundation Committee which awards grants to law and public service related entities, many of which provide legal services to the disadvantaged. Work on that committee has averaged approximately 32 hours a year.**

**I have taught the "Citizenship and the Nation" merit badge course for a local Boy Scout troop several times in the last few years, which entails a 45 minute class once a week for 6 weeks. In the past I have participated in a number of CLE courses, serving on panels or giving overviews of a particular area of federal criminal law or trial practice for the Mobile Bar Association, the Alabama Bar Institute, the Eleventh Circuit Judicial Conference, and the American College of Trial Lawyers.**

**I am very active in youth work at my church, teaching a Bible study course for eighth graders one hour a week for 9 months out of the year. I also participate in my church choir and bell choir, and am an elder in the church. I also have served on the Board of Directors of a private college preparatory school for over 10 years.**

The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

**I have never belonged to any such organization.**

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstance which led to your nomination and interviews in which you participated).

**There is no selection commission that recommends candidates for this judicial district.**

**Senator Jeff Sessions (R. Ala.) was U.S. Attorney in this district during the Reagan/Bush administrations and was my boss for 11 years. He knew of my interest in being a U.S. District Court judge and had previously indicated to me his support. I spoke with him after the election last year and told him that I was still very much interested in the possibility of a nomination. I also wrote to Senator Richard Shelby (R. Ala.) and told him of my interest.**

**In February, 2001, I was interviewed by a member of Senator Session's staff,**

**In May, 2001, I was interviewed by several attorneys in the White House Counsel's office.**

**Since then, I have filled out numerous forms for the White House, Department of Justice, Administrative Office of Courts, and this form for the Senate, and have been interviewed by the FBI and the Department of Justice.**

**My nomination was sent to the Senate by President Bush on August 2, 2001.**

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

**No.**

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in a manner of an administrator with continuing oversight responsibilities.

**I am a firm believer in our three-branched system of democracy and the way it was designed to work by the framers of the Constitution. For it to function properly, each branch should stick to the function assigned to it. This means that the federal judiciary should stick to interpreting and applying the law – and stay away, to the best of its ability, from “making” law or “enforcing” law. Courts are not designed to run executive programs and should avoid oversight responsibilities if at all possible.**

**A federal trial judge should strive to address only the problem confronting him or her and not reach a more widely encompassing solution than is called for by the actual controversy. Solutions or decisions should be limited to the actual controversy, and courts should not “reach” to find jurisdiction in order to address encompassing social problems or to right a perceived wrong. The principle of *stare decisis* should be prime.**



Senator DURBIN. Thank you very much.  
Ms. Krieger?

**STATEMENT OF MARCIA S. KRIEGER, NOMINEE TO BE  
DISTRICT COURT JUDGE FOR THE DISTRICT OF COLORADO**

Judge KRIEGER. I, too, have no opening statement except to express my appreciation for being able to be here at the hearing today and the honor that you do me to invite me.

I would like to introduce my family, and I am very blessed to have a large family with me here today, my husband, Harry Roberts; my parents, Judge Don Smith and Marjorie Smith; our five children, Melissa Roberts, Kelly Roberts, Miriam Krieger, Heidi Roberts, and Mathias Krieger; and I am also blessed to have extended family who lives in the area, my sister-in-law, Nancy Saenz, and her children, Marnie Litz, Robin Saenz, Tyler Saenz; and I note that there are three members from the bankruptcy staff of the Administrative Office of the U.S. Courts who are also here and I am grateful for that.

The biographical information of Judge Krieger follows.]

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

## 1. Full name (include any former names used.)

Marcia Smith Krieger  
Maiden Name: Marcia Trame' Smith

## 2. Address: List current place of residence and office address(es).

Residence: Littleton, CO

Work: U.S. Bankruptcy Court  
U.S. Customs House  
721 19<sup>th</sup> Street, Room 543  
Denver, CO 80202

## 3. Date and place of birth.

March 3, 1954, Denver, CO

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married: Frank H. Roberts, Jr.  
Attorney; commodities broker  
Lind-Waldock & Co., Inc.  
Lakewood, CO

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Names	Location	Dates Attended	Degree
Lewis and Clark College	Portland, Oregon	1972-1975	B.A. Summa Cum Laude International Relations; German; May, 1975
University of Munich (Ludwig Maximilian Planck Institute)	Munich, Germany	1975-1976	Rotary Graduate Fellow (no degree)
University of Colorado, School of Law	Boulder, Colorado	1976-1979	J.D. - May, 1979

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1976 (summer proofreader)	State of Colorado Revisor of Statutes
1976-1983 (Law Clerk, then Associate)	Mason, Reuler & Peek, P.C. Denver, CO
1983 (Litigation Associate)	Smart, DeFurio, Brooks, Eklund & McClure Denver, CO
1983-1988 (Associate, then Shareholder)	Brooks & Krieger, P.C. (formerly Sidney B. Brooks, P.C.) Denver, CO
1988-January, 1990 (Of Counsel, then Shareholder)	Wood, Ris & Hames, P.C. Denver, CO
January, 1990-January, 1994 (Solo Practitioner)	Law Offices of Marcia S. Krieger Englewood, CO
January, 1994 to present (U.S. Bankruptcy Judge; Chief Judge, Bankruptcy Court; Bankruptcy Appellate Panel - 10 <sup>th</sup> Circuit)	United States Government
August-December, 1999	University of Colorado
August-December, 2000	School of Law
August-December, 2001 (Adjunct lecturer)	Boulder, CO
Kenya Childrens Foundation, 1999-2001 (Board Member/Officer)	

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
- College:** Miscellaneous scholarships and grants. Graduated in three years - *summa cum laude*
- Post-graduate:** Rotary International Graduate Fellowship (full scholarship for study of Ludwig Maximilian Planck Institute, Munich, Germany (August 1975-June 1976); University of Colorado, full tuition scholarship (1976-77), legal writing instructor, moot court judge, trial advocacy program.
- Professional:** Colorado Social Science Consortium, guest lecturer - Spice V Summer Institute, Center for Research And Development in Law-Related Education (CRADLE), Wake Forest University School of Law (1990).
9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.
- Bankruptcy Administration Committee of the Judicial Conference of the United States (2000-2003)
  - Long Range Planning Committee, Security Committee and Automation Committee - District of Colorado
  - National Conference of Bankruptcy Judges - Member (Past Chair - International Law Relations Committee 1996-1998; Newsletter and Program Committees 1999-present)
  - Colorado Bar Association - Member (1979-present) (Chair - Committee on Court Reform 1997-98) (Professionalism Committee) (Bankruptcy Subcommittee of the Business and Corporate Law Section)
  - Arapahoe County Bar Association - Member (1979-present)
  - Colorado Bar Foundation - Fellow (1996-present)
  - American Bar Association - Member (1994-present)
  - Alfred A. Arraj Inn of Court - Pupillage Group Leader and Officer (1994-2000); President (1997-1998)
  - Colorado Judicial Coordinating Council - past member; (Co-Chair 1998-2000; Chairman of Committee on Concurrent Jurisdiction 1997-2000)
  - Colorado Women's Bar Association - past member (varying time periods)
  - National Conference of Women Judges - past member (1994-1995)
  - American Bankruptcy Institute - past member
  - SE Metropolitan Law Club - past member (1991-1994)
  - Denver Law Club - past member (1989)

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**Lobbying Organizations:** National Conference of Bankruptcy Judges; American Bar Association

**Other Organizations:** Kenya Children's Foundation - Board Member, Vice President (1999-present); Boy Scout Troop 456 - volunteer (1996-present); Zonta International (1978-1982; 1999-present)

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Admission	Date
Colorado Supreme Court (all Colorado courts of general jurisdiction);	1979-present
United States District Court for the District of Colorado	1979-present
United States Tenth Circuit Court of Appeals	1981-present

**Special Admission:**

United States Bankruptcy Court for the District of Wyoming;	1984
United States Bankruptcy Court for the District of Minnesota;	1985
United States Bankruptcy Court for the Southern District of New York;	1988

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**Books and Articles:** (Copies supplied, except where noted.)

*The New Bankruptcy Law* - Co-author - electronic text book to be published by WEST Publishing during 2001 (Not yet complete.)

*International Insolvency Bench Book* - Co-author - to be published by the Federal Judicial Center in 2001 (Not yet complete.)

"The Bankruptcy Court Is A Court of Equity: What Does That Mean?", 50 S.C. L. REV. 275 (1999)

*Colorado State Court Bench Book* - author of bankruptcy section (1998)

*Women's Legal Guide*, author of the chapter on Bankruptcy, Fulcrum Publishing (1996)

"Justice: Just Do It!", *The Colorado Lawyer*, Vol. 24, No. 12, December 1995

Guest Editorial - Rocky Mountain News, April 24, 1989 (Unable to obtain copy; publisher has no record.)

"The Bankruptcy of a Lessee or Junior Lienholder, What Impact on a Foreclosing Senior Lienholder" - Co-author, *Commercial Law League Newsletter*, 1988 (Unable to locate copy.)

I do not believe that I have presented any speeches on issues involving constitutional law or legal policies. For the most part, the following lectures, speeches and presentations concern general education about the United States or foreign legal systems, or issues pertinent to continuing legal education for attorneys or other professionals.

"Bankruptcy & Equity - Where do they intersect?" - Federal Judicial Center Workshop for Bankruptcy Judges (2001-2002); Colorado Lawyers Chapter of the Federalist Society - (2001)

Summary of Bankruptcy Law Quarterly Review - (2000-2001)

The Bill of Rights and Your Responsibilities - program to satisfy Boy Scout First Class requirement - Troop 456 (1998-2001)

Colorado Professionalism and Ethics Course for new lawyers - (1998-2000)

"What We Don't Know About the Real Costs of Litigation" - Colorado Judicial Conference (1998)

"International Issues in Bankruptcy" - Federal Judicial Center Workshops for Bankruptcy Judges (1998)

"Effective Litigation Techniques" - ABI Rocky Mountain Bankruptcy Conference (1998)

"Service Beyond Self in the Legal System" - United States Air Force Academy (1997)  
Symposium on Bankruptcy Issues for State Court Trial Judges - Sponsored by Colorado State Court Education, Colorado Judicial Coordinating Council and American Bankruptcy Institute (1997)

"Selected Evidentiary and Procedural Matters" - Recent Developments in Business Bankruptcy Law & Practice -Colorado Continuing Legal Education (1997)

"Bankruptcy Ethics and Pre-Bankruptcy Planning" - ABI Rocky Mountain Bankruptcy Conference (1997)

"Developing Laws and How Does the Law Affect People's Lives?" - Mark Twain Elementary School (1997)

"The Importance of Judicial Philosophy" - Boulder County Bar Association (1997)  
Issues in Bankruptcy Practice - U.S. Trustee's Bankruptcy Practitioners' Brown-Bag Series (1996-97)

"Professional Fees" - 1996 Colorado Bankruptcy Symposium (1996)

"Expert Witness Testimony" - ABI Rocky Mountain Bankruptcy Conference (1996)

- Women's Legal Guide*, co-author (1996 Fulcrum Publishing)
- Goldilocks Mock Trial - Courtroom Education for Third Graders at Mark Twain Elementary School (1995)
- "Ethics and Professionalism: A View from the Bench" - Larimer County Bar Association (1995)
- "Professional Fees in Bankruptcy" - 1995 Colorado Bankruptcy Symposium
- "Expert Witness Testimony" - ABI Rocky Mountain Bankruptcy Conference
- National High School Mock Trial Judge (1995-1999)
- "Bringing Western Justice into the 21st Century or Everything You Wanted to Know about Going to Trial in Bankruptcy Court but were Afraid to Ask" - Southeast Metro Denver Law Club (1994)
- "Key Issues in Family Law in Colorado, Impact of Bankruptcy" - National Business Institute, Inc. (1993)
- "The Development of Human Consciousness (as a Society and Individual)" - adult Christian education - Episcopal Church, Englewood, Colorado (1993)
- "Journaling" - Anglican Conference on Prayer (1993)
- National Institute of Trial Advocacy Instructor - Six-Day Program - University of Denver (1992)
- "Impact of Bankruptcy on Divorce Rights & Remedies" - Presented to University of Denver (1991)
- Advanced Family Law Class, College of Domestic Relations Practitioners (1991)
- "Family Law in Colorado: A Financial Focus" - Legal Education Institute, Inc. (1991)
- "The American Legal System in the Year 2000 -- A White Elephant or Bald Eagle?" - American Association of University Women (AAUW) (1991)
- "Professionalism" - Colorado Continuing Legal Education 1990 Annual Ethics Institute (1990)
- "Bankruptcy and the Automatic Stay" - Twelfth Annual Conference of the National Association of Women Judges (NAWJ) (1990)
- "Comparative Legal Systems" - Spice V Summer Institute, Center for Research and Development in Law-Related Education (CRADLE) Wake Forest University School of Law (1990)
- "Real Estate Reorganization; Approaches, Strategies and Current Case Law" - Professional Education Systems, Inc. (1990)
- "The American Legal System in the 21st Century - Bald Eagle or White Elephant" - Colorado Social Science Consortium Symposium on Law in the Classroom (1989)
- "Ethics and Professionalism" - Colorado Continuing Legal Education, 1989 Annual Ethics Institute (1989)
- "Dealing with Bankruptcy Problems in State Courts" - Colorado Annual Judicial Conference (1989)
- "Principles of Insolvency and Bankruptcy" - Graduate 1988 Tax Program, University of Denver (1989)
- "Fair Debt Collection Practices Act & Fundamentals of Debt Collection" - Graduate Tax Program, University of Denver (1988)
- "Bankruptcy-Ese: Key Terms and Concepts" - Colorado Trial Lawyers Association (1988)

- "The Impact of Bankruptcy on Divorce - Rights and Remedies" - Colorado Trial Lawyers Association (1988)  
 "The Impact of Bankruptcy on Divorce" - Professional Education Systems, Inc. (1987)  
 "Comparative Legal Systems" - Colorado State Referees Conference; Social Science Education Consortium, Inc. (1987)  
 "Comparative Constitutions - U.S., Soviet and Chinese" - Seminars for High School Teachers by Social Science Consortium (1987)  
 "Bankruptcy and Domestic Relations" - Professional Education Systems, Inc. (1987)  
 "Jurisdiction - Where To Go And Why" included in Principles of Bankruptcy and Reorganization, Continuing Legal Education in Colorado, Inc. (1985)  
 "Basic Bankruptcy Practice Handbook" - Professional Education Systems, Inc. (1983)  
 "Colorado Collection Law" - Professional Education Systems, Inc. (1982)  
 "Creditors' Rights in Chapter 13" - Colorado Continuing Legal Education (1980)

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent; last full physical 1990; semi-annual check-ups conducted by Dr. Usha Varma

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

January 1994-present (14 year term)	U.S. Bankruptcy Judge District of Colorado Appointed by 10 <sup>th</sup> Circuit Court of Appeals; jurisdiction per 28 U.S.C. § 1334; referred pursuant to 28 U.S.C. § 157.
January 2000 - present (no specified term)	Chief Judge; appointed by the U.S. District Court; jurisdiction per 28 U.S.C. § 154.
January 2001 - present (5 year term)	Member of the Bankruptcy Appellate Panel for the 10 <sup>th</sup> Circuit; appointed by the 10 <sup>th</sup> Circuit Court of Appeals; jurisdiction pursuant to 28 U.S.C. § 158(b).

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with



the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

**1) Significant opinions:**

*Mitsubishi v. Longley (In re Longley)*, 235 B.R. 651 (B.A.P. 10<sup>th</sup> Cir. 1999);  
*In re Mount Carbon Metropolitan District*, 24 B.R. 18 (Bankr. D. Colo. 1999);  
*In re Fleming*, unpublished (attached), Case No. 94-21099 MSK (Bankr. D. Colo. February 27, 1998);  
*Buckner v. Westmoreland Coal Company (In re Westmoreland Coal Co.)*, 213 B.R. 1 (Bankr. D. Colo. 1997);  
*In re Printcrafters*, 208 B.R. 968 (Bankr. D. Colo. 1997);  
*In re Thrall*, 196 B.R. 959 (Bankr. D. Colo. 1996);  
*In re Martin*, 197 B.R. 120 (Bankr. D. Colo. 1996);  
*In re Merrill*, 192 B.R. 245 (Bankr. D. Colo. 1995);  
*In re City of Colorado Springs Spring Creek General Improvement District*, 198 B.R. 683 (Bankr. D. Colo. 1995).

**2) Reversals:**

1. *In re Heinzy*, 194 B.R. 898 (D. Colo. 1996).

This matter concerned the interpretation and application of Fed.R.Bankr.P. 4007(c). It requires that a complaint for determination of dischargeability of a debt (pursuant to 11 U.S.C. § 523) be filed within 60 days after the date first set for the § 341 meeting of creditors. The Rule states that the Court shall give creditors 30 days notice of the 60-day deadline, but later states that a motion to extend such deadline must be filed before its expiration. The filing period is not subject to extension except as provided in the Rule.

The case presented an issue of first impression in the District. Where a creditor is late scheduled by the debtor, but receives notice that it has been scheduled in the bankruptcy case before expiration of the 60-day deadline, must it request an extension of the period to file a dischargeability before its expiration? Alternatively, does it have 30 days from receiving notice of the bankruptcy case to request the extension? No instructive authority existed in the Tenth Circuit; rulings in the Fifth Circuit and Ninth Circuit, the only circuits to address the issue, conflicted. I adopted the reasoning of *In re Sam*, 894 F. 2d 778 (5<sup>th</sup> Cir. 1990). Judge John L. Kane, Jr. of the District Court reversed my decision, preferring, instead, the reasoning found in *In re Dewalt*, 961 F. 2d 848 (9<sup>th</sup> Cir. 1992).

2. *In re Franklin-Harris Associates, Inc.*, Bankruptcy Case No. 95-13098 MSK; Appeal No. 97-B-300 (United States District Court for the District of Colorado).

This matter involved a debtor's motion to reopen a bankruptcy case. The issue presented was whether, pursuant to 11 U.S.C. § 554, counterclaims which were not listed in the bankruptcy schedules had been abandoned to the debtor when the case was closed. I determined that the bankruptcy Trustee's informal knowledge of the claims and choice not to administer them equated to scheduling of the claims. No purpose was therefore served by reopening the case for administration.

The District Court (Hon. Lewis T. Babcock) disagreed. He reversed the denial of the motion to reopen finding that under the literal terms of § 554 the counterclaims had to be scheduled by the debtor in order to be subject to abandonment when the case was closed.

3. *In re Printcrafters*, Bankruptcy Case No. 96-12068 MSK; Appeal No. 97-N-465 (United States District Court for the District of Colorado).

This matter arose upon request for allowance of an administrative expense for attorney fees incurred by counsel for a debtor in the Chapter 11 phase of a case which later converted to Chapter 7. The Chapter 7 Trustee contended that a retainer paid by the debtor to counsel prior to the bankruptcy filing was a fraudulent conveyance unable to be applied to satisfy post-petition attorney fees. Instead, pursuant to 11 U.S.C. § 726, the allowed attorney fees would, like all other Chapter 11 administrative expenses, be subordinated to administrative expenses of the Chapter 7 phase of the case. The attorneys argued that they held a pre-petition lien in the retainer and therefore could apply it to allowed post-petition fees and expenses.

This situation presents a problematic aspect of bankruptcy law. To assure payment for services rendered after a bankruptcy filing, debtor's counsel often requires the posting of a cash retainer pre-petition. But 11 U.S.C. § 327 precludes a Chapter 11 debtor from hiring an attorney who is a creditor at the time of filing. Thus counsel usually pay themselves all pre-petition fees and expenses on the date of the bankruptcy filing. That was the situation here. Counsel held a retainer but were owed nothing when the bankruptcy was filed. I ruled that under Colorado law, counsel had no lien on monies in their possession because they were owed nothing for attorney fees and expenses. If they held a valid lien against property of the debtor at the time of filing, they were, by definition, creditors who were then barred from being hired for post-petition services.

The District Court (Hon. Edward Nottingham) reversed, concluding that under Colorado law attorneys could hold a valid lien on retained funds for future services though there existed no underlying debt. In addition, the bar to a creditor being hired as a professional for a bankruptcy estate under § 327(a) did not apply to attorneys.

4. *In re Posey*, Bankruptcy Adversary Proceeding 96-1328 MSK; Appeal 96-M-1884 (United States District Court for the District of Colorado).

This matter concerned entry of a default judgment on a claim brought pursuant to 11 U.S.C. § 523. I entered a judgment declaring the debt non-dischargeable, but based upon my reasoning in *In re Thrall*, 196 B.R. 959 (Bankr. D. Colo. 1996), declined to enter a money judgment on the debt. (My reasoning in *Thrall* is that such act exceeds the jurisdiction of the Bankruptcy Court and improperly deprives parties of rights available in state courts). The District Court (Hon. Walker D. Miller) reversed the portion of my ruling declining to enter a money judgment. He rejected my reasoning in *Thrall*. Relying upon case authority found in circuits other than the tenth, which has not addressed the issue, he concluded that because the Bankruptcy Court is a “court of equity,” it has authority to enter money judgments on non-dischargeable debts.

3) Opinions addressing constitutional issues – none.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a clerk.

2. whether you practiced alone, and if so, the addresses and dates;

I practiced alone from January 1990 - January 1994; Law Offices of Marcia S. Krieger, 5251 DTC Parkway, Penthouse 2, Englewood, CO 80111.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1976-1983 (Law Clerk, then Associate)	Mason, Reuler & Peek, P.C. 718 17 <sup>th</sup> Street, Suite 2450 Denver, CO 80202
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1983 (Litigation Associate)	Smart, DeFurio, Brooks, Eklund & McClure 1120 Lincoln Street Denver, CO 80203
1983-1988 (Associate, then Shareholder)	Brooks & Krieger, P.C. (formerly Sidney B. Brooks, P.C.) 1120 Lincoln Street The Chancery, Suite 902 Denver, CO 80203
1988-January, 1990 (Of Counsel, then Shareholder)	Wood, Ris & Hames, P.C. 1775 Sherman Street 1600 Mellon Financial Center Denver, CO 80203
January, 1990-January, 1994 (Solo Practitioner)	Law Offices of Marcia S. Krieger 5251 DTC Parkway, Penthouse 2 Englewood, CO 80111
January, 1994 to present (U.S. Bankruptcy Judge; Chief Judge, Bankruptcy Court; Bankruptcy Appellate Panel - 10 <sup>th</sup> Circuit)	United States Government U.S. Customs House 721 19 <sup>th</sup> Street, Room 543 Denver, CO 80202
August-December, 1999 August-December, 2000 August-December, 2001 (Adjunct lecturer)	University of Colorado School of Law Boulder, CO

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1977-1983

During this period, I was a law clerk and then an associate with the firm of Mason, Reuler & Peek, P.C., which was engaged in a general practice. I did extensive trial work in Colorado county and district courts in collection, commercial litigation, domestic relations and occasional criminal and traffic matters. In addition, I handled real

estate transactions, liquidations and workouts outside of Bankruptcy Court, acquisitions and sales of businesses, preparation of wills, incorporations and business set-ups and assisted in several probate matters.

By 1982, I was responsible for substantially all of the commercial litigation and collection matters handled by the firm. Due to my teaching in the bankruptcy area, I began to receive referrals of bankruptcy matters and gradually expanded the firm's bankruptcy practice.

In 1983, at the request of Sidney Brooks and Carl Eklund, I left Mason, Reuler & Peek, P.C. to join Smartt, DeFurio, Brooks, Eklund & McClure, P.C. to specialize in bankruptcy litigation.

#### 1983 - 1988

I joined the firm of Smart, DeFurio, Brooks, Eklund & McClure, P.C. as an associate specializing in bankruptcy litigation. After approximately six months, Sidney Brooks and I left that firm and set up a new firm, initially named Sidney B. Brooks, P.C., which later became Brooks & Krieger, P.C.

During this time period, my practice was 85 to 90% litigation. I represented numerous lending institutions, national and local businesses, and individuals in general litigation involving contractual disputes, quiet title actions, collections, personal injury actions, will contests, replevins, and foreclosures in state and federal court. We specialized in representation of creditors, debtors, trustees and creditors' committees in bankruptcy cases (Chapters 7, 11 and 13). We also provided general business advice to ongoing local and national business clients. This type of business advice included resolution of lease disputes, purchase and sale of businesses, incorporations, and partnership agreements.

In 1988, Sidney Brooks was appointed as a United States Bankruptcy Judge. As we were winding up our firm, I received an offer to transfer my practice and to create a commercial bankruptcy department at Wood, Ris & Hames, P.C.

A substantial part of my caseload was generated by referrals from attorneys outside the firm. In addition, I served as co-counsel or as a consultant to several firms in analyzing how bankruptcy issues affect other areas of law, such as domestic relations, intellectual property issues, acquisitions and/or sales of businesses, real estate transactions and general litigation matters. Among those attorneys with whom I have worked are: Feder, Morris & Tamblyn; Edwards, Terrill & Mygatt; Chester Martine; Chrisman, Bynum & Johnson; and Parcel & Morrow.

1988 - 1990

During this time period, I was special counsel to and a shareholder in the firm of Wood, Ris & Hames, P.C. The firm's practice was primarily insurance defense. I joined the firm for the purpose of developing a bankruptcy/commercial litigation department. I was responsible for the supervision of the bankruptcy aspects of all state and federal court litigation handled by the firm. This included acting as an in-house consultant in the firm's defense of malpractice, personal injury, directors' and officers' liability matters, real estate, and business matters. For example, the firm represented a number of insurance companies which held real estate investments. I represented those companies as creditors in bankruptcy matters.

I also supervised and trained associates (and partners) to handle bankruptcy and commercial matters and continued to represent ongoing clients in commercial and bankruptcy matters. On several occasions, I was contacted by various judges in the Colorado state court system regarding the application of bankruptcy law to pending state court matters. Ultimately, I was requested to present a seminar at the Colorado State Judicial Conference in the Fall of 1989 on bankruptcy implications in state court litigation.

Unfortunately, Wood, Ris & Hames' insurance defense practice was not compatible with a commercial/bankruptcy practice, so in early 1990, I left Wood, Ris & Hames to continue my practice, independently. While at Wood, Ris & Hames, a substantial part of my case load continued to be generated by attorney referrals. I served as co-counsel with or as a consultant to numerous attorneys in analyzing the bankruptcy issues involved in other areas of law, such as domestic relations, intellectual property issues, acquisitions and/or sales of businesses, real estate transactions, and general litigation matters. Among those attorneys with whom I worked are the following: Feder, Morris & Tamblyn, P.C.; David W. Kirch; Yates & Ehlers; Craine & Associates; Tenney & Bentley.

January, 1990 - January 1994

From January, 1990 until I was appointed to the bankruptcy bench, I practiced as a solo practitioner with the assistance of a paralegal and law clerk. My practice continued to include commercial litigation matters, bankruptcy and non-bankruptcy workout or liquidation matters and probate cases. I represented several long-term clients, and quasi governmental entities, debtors, creditors and Trustees in litigation and bankruptcy matters. A substantial portion of my caseload was generated by attorney referrals. I continued to serve as co-counsel with, a consultant to, or as an expert witness for numerous attorneys, including David W. Kirch, Esq.; Sabey, Epstein, Ordelheid & Smith, P.C.; Elaine G. Edinburg, Esq.; Feder, Morris & Tamblyn, P.C.; Craine & Leake, P.C.; Dawes & Craine, P.C.

Describe your typical former clients, and mention the areas, if any, in which you have specialized.

1977 - 1983

The Bank of Denver; Cordillera Corporation; Carolina International/Century Housing; real estate partnerships and creditors in bankruptcy; various industrial banks; individuals.

1983 - 1988

Commercial Litigation: Summit County Bank; Cordillera Corporation; Fisher Educational Systems; The Warner Company; Empire Savings & Loan; York State Bank; First National Bank of Neodesha; First National Bank of Oelwein; L.L. Johnson Company; Isbel Kent Oakes Dry Goods Company.

General Business: L.L. Johnson Company; Isbel Kent Oakes Dry Goods Company; Tiorco, Inc.

Bankruptcy (Representation of Trustees or Unsecured Creditors Committees): Linda Siderius, Esq.; Unsecured Creditors Committee for Marlin Oil Company.

Bankruptcy (Representation of Creditors): Power Master, Inc. (Member of Unsecured Creditors Committee in Kaiser Steel Bankruptcy); Pride Manufacturing; Wadell Press, Inc.; D.B. Orban Co.

Bankruptcy (Debtors - Chapter 11): Data Ray, Inc. (successful reorganization and dismissal); Lederman Enterprises, Inc. (confirmed reorganization plan).

1988 - 1990

Commercial Litigation: Summit County Bank; Durango National Bank; Cordillera Corporation; W.W. Investments; United Van Lines; Phillips & Tober Partnership; P-V Partnership.

Bankruptcy (Representation of Trustees or Unsecured Creditors Committees): Andrea Berger, Esq.; Linda Siderius, Esq.

Bankruptcy (Representation of Creditors): Great American Life Insurance Company; Lloyds of London (*In re Allis Chalmers*); Mellon Bank; jetCenters, Inc. (*In Re Eastern Airlines* and *In re Continental Airlines*); Chubb Life America; New Hampshire Life Insurance; Powermaster, Inc. (*In re Kaiser Steel*).

Bankruptcy (Debtor Representation - Chapter 11): Consolidated Pet Foods (confirmed Chapter 11 Liquidation Plan); miscellaneous Chapter 7 cases for businesses or professional persons.

January, 1990 - January, 1994

Commercial Litigation and Business Matters: Resolution Trust Corporation; PERA (Public Employee Retirement Association); Washington Bulb Company; Durango National Bank.

Bankruptcy (Creditors): Resolution Trust Corporation (*In re Cornerstone Oxford Limited Partnership - Oxford Hotel*), (*In re Gillette Holdings, Inc.*), (*In re M&L Business Machine Co., Inc.*), and (*In re FNRS*); Farber Bag & Supply Co., Inc. (*In re Tanaka Farms*); jetCenters, Inc. (*In re Eastern Airlines*).

Bankruptcy (Debtor): Claude France (Chapter 7 case with dischargeability litigation); E. Jedd Roe, Jr. (successful individual Chapter 11 reorganization).

Trustees: James Chadderdon, Esq. (*In re Smartt Construction Co.*).

Bankruptcy (Workouts or Out of Bankruptcy Liquidations): The Barber Family Farms; Lifeorce Technology; 32<sup>nd</sup> Avenue Corporation.

Probate Matters: *In re Estate of Gray*; *In re Estate of Penner*; *In re Estate of Sloat*.

1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

For the entirety of my career, I appeared frequently in state, federal and bankruptcy court, and before various appellate courts. The frequency of my court appearances has fluctuated depending upon the matters I was handling at the time and the courts before which I appeared. In the early years, the cases which I handled were relatively small and many went to trial. As the complexity of the matters (and my skill) increased, I handled fewer but more significant matters, more in federal court, and many of which settled. The number of matters litigated also varied due to the nature of the controversy and the court presiding. In some bankruptcy cases no court appearances were required, while in others, multiple hearings, and indeed, multiple lawsuits were involved.



2. What percentage of these appearances was in:

(a) federal courts;

Approximately 75% to 85%;

(b) state courts of record;

Approximately 15% to 20%;

(c) other courts.

Not applicable.

3. What percentage of your litigation was:

(a) civil;

95%

(b) criminal.

5%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Given my 15-year time practice prior, various associations and the absence of records from former firms, I can only estimate the number of cases falling within this category. From 1989 to 1994, I tried approximately seven to ten cases to judgment, all as sole or chief counsel. In addition, in bankruptcy cases, I litigated many matters in single or multiple evidentiary hearing(s). During the last five years of my practice, I averaged four to five of such hearings per year. Prior to 1989, a very rough estimate would be thirty to sixty matters tried to verdict or judgment. In approximately 50% of cases, I was lead or sole counsel and in the remainder served as co-counsel. The highest litigation period was between 1980 and 1990.

5. What percentage of these trials was:

(a) jury;

2%

(b) non-jury.

98%

18. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- 1) *In re Jenkins*, 13 B.R. 721 (Bankr. Colo. 1981); 19 B.R. 105 (D. Colo. 1982).

This case involved the first interpretation of 11 U.S.C. § 362 (automatic stay) as it applied to the redemption periods under Colorado real estate foreclosure law.

I represented Aspen Chateaux Mortgage, which was the holder of a certificate of purchase from the foreclosure of the Jenkins' property. Before the trial court, I argued that the automatic stay did not toll the redemption period following foreclosure. At most, the redemption period was tolled only for a period of 60 days pursuant to 11 U.S.C. § 108.

In a decision rendered less than a year later, (*In re Cucumber Creek Development, Inc.*, 33 B.R. 820 (D. Colo. 1983)), Judge Kane revisited this issue, labeling it "of considerable importance." He reconsidered his prior ruling and adopted the position I had earlier advocated that 11 U.S.C. § 362 was inapplicable to state foreclosure redemptive rights. He concluded that because the redemption period passed under state law without action by a creditor, it was governed by 11 U.S.C. § 108 and, therefore, tolled the redemption period only for 60 days after a bankruptcy filing. Since 1983, this decision has been the definitive law on the issue in Colorado.

Dates of Litigation and Court Before Whom Case Was Pending:  
1981-1982

- United States Bankruptcy Court: The Honorable Glen C. Keller
- United States District Court: The Honorable John L. Kane, Jr.

Nature of Participation, Parties and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Jack and Eleanor Jenkins	John A. Meininger, Esq. (Sterling & Simon)	10065 E. Harvard #209 Denver, CO 80231 (303) 759-0986
Trudi Peet and Bank of Roaring Fork	Carl A. Eklund, Esq. and James B. Holden, Esq. (DiManna, Eklund & Jackson)	633 17 <sup>th</sup> Street #2000 Denver, CO 80202 (303) 291-2600
Aspen Chateaux Mortgage	Marcia S. Krieger (Mason, Reuler & Peek)  Ronald Austin, Esq. (co-counsel from Aspen)	

The matter was referred to me by Ronald Austin, who continued as co-counsel. I handled all of the bankruptcy analysis, briefing and argument.

2) *In re Hill*, 71 B.R. 517 (Bankr. D. Colo. 1987).

Brenda and Marvin Hill filed a voluntary petition under Chapter 7 of the Bankruptcy Code. At the time of the filing of their petition, they believed that they owed no FICA/FUTA taxes. After the bar date for filing of claims, the Internal Revenue Service asserted a claim in an amount in excess of \$16,000.00 and recorded a tax lien against the Hills' property. Due to the late filing of the claim, the Trustee refused to pay the claim or to dispute it.

The Hills believed that the Internal Revenue Service had improperly double assessed their liability for FICA/FUTA taxes, failed to credit payments, and improperly imposed non-payment penalties. The Hills spent two years trying to resolve the Internal Revenue Service claim, but the Internal Revenue Service refused to reduce or amend it.

Ultimately, the Hills brought suit against the Internal Revenue Service in an adversary proceeding in the Bankruptcy Court. They sought: 1) a determination of their tax liability pursuant to 11 U.S.C. § 505; 2) injunction of the Internal Revenue Service from further collection activity; and 3) repayment of their legal and accounting expenses pursuant to 26 U.S.C. § 7430.

At trial, the court found that the Internal Revenue Service's position was substantially unjustified and its conduct constituted unreasonable and unwarranted harassment. Judge Votolato ordered the Service to pay the accountant's and attorney's fees sought by the Hills.

Significance of the Case: This case was the first case nationwide to involve application of 26 U.S.C. § 7430 in a bankruptcy context.

Dates of Litigation and Court Before Whom Case was Pending:  
1986-1987

- United States Bankruptcy Court: The Honorable Anthony Votolato (District of Rhode Island) sitting by designation

Nature of Participation, Parties, and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Martin and Brenda Hill	Marcia S. Krieger (represented the Hills in the Chapter 7 filing, negotiations with the IRS and in the § 505 adversary proceeding)	
	John D. Moats, Esq. (tax expert who served as co-counsel)	12150 E. Briarwood Avenue #116 Englewood, CO 80112 (303) 799-4851
Internal Revenue Service	Mark Fraase (U.S. Department of Justice, Tax Division, Washington, D.C.)	Unknown

- 3) *In re John Vann*, Bankruptcy Case No. 88-B-11859J; Related opinions see: 113 B.R. 704 (Bankr. D. Colo. 1990), 128 B.R. 285 (Bankr. D. Colo. 1991), and 136 B.R. 863 (D. Colo. 1992).

John Vann, a licensed stock broker, filed a voluntary petition under Chapter 7 of the Bankruptcy Code on September 2, 1988. At the time of his filing, I represented Christopher L. Phillips, his former partner and single largest creditor, in pending state court litigation to collect unpaid partnership capital calls.

Despite having an annual income of more than \$600,000.00 over a period of several years, Mr. Vann's schedules reflected no assets. From his familiarity with Mr. Vann's financial affairs, Mr. Phillips identified and advised the bankruptcy Trustee of numerous assets and transfers of assets which he believed Mr. Vann had failed to disclose. Investigation of those assets led to discovery of transfers and concealment of additional assets, both before and after the bankruptcy filing. These included unauthorized post-petition

consumption of deferred compensation funds, post-petition sale of an airplane hangar, and post-petition contracts for sale of real property owned by the debtor and one of his attorneys.

Phillips, the Trustee, and other creditors filed complaints to deny Mr. Vann's discharge pursuant to 11 U.S.C. § 727 and objected to Mr. Vann's claims of exemption in deferred compensation funds and household goods. Mr. Vann's claim of exemption was denied by Judge Brumbaugh in 113 B.R. 704 (Bankr. D. Colo. 1990). The discharge litigation was settled on the eve of trial. The settlement requires Mr. Vann to repay 100% of all allowed claims in order to obtain his discharge.

In addition, creditors and the Trustee were successful in recovering \$125,000.00 of estate property which had been paid from Mr. Vann's deferred compensation funds. Judge Brumbaugh entered judgment requiring repayment in 128 B.R. 285 (Bankr. D. Colo. 1991). The order was appealed and affirmed by the Honorable John L. Kane, Jr. in 136 B.R. 863 (D. Colo. 1992).

In representing Phillips, I conducted the initial investigation, prosecuted the discharge case and the exemption with Paul Quinn, who was counsel for the Trustee. Mr. Vann was represented by a series of ten attorneys, and all phases of the litigation were fiercely contested. During the case, several creditor counsel received harassing phone calls; I received a death threat against my children.

Significance of the Case: This case involved a determination and application of several sections of the Bankruptcy Code: 11 U.S.C. § 727 (discharge); § 522 (exemptions); and § 329 (fees paid to professionals). The debtor attempted to utilize the bankruptcy process to defraud his creditors but was unsuccessful. Despite the difficulties in the case, the creditors were repaid all amounts owed to them. New precedent set out the standards for debtors and their counsel in the areas of the law just mentioned.

Dates of Litigation and Court Before Whom Case was Pending:  
September, 1988 - June, 1990

- United States Bankruptcy Court: The Honorable Roland J. Brumbaugh
- United States District Court: The Honorable John L. Kane, Jr.

Nature of Participation, Parties and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Christopher L. Phillips	Marcia S. Krieger	
Andrea Berger, Trustee	Paul G. Quinn, Esq.	1725 Gaylord St. #103 Denver, CO 80206 (303) 329-9700

Metro National Bank	Peter Lucas, Esq. (Rothgerber, Appel, Powers & Johnson)	1917 Market Street Denver, CO 80202 (303) 297-9800
Capitol Federal Savings	Kris Edwin Jukola, Esq. (Hal & Evans)	363 S. Harlan St. #280 Lakewood, CO 80226 (303) 333-4900

- 4) *In re France*, 138 B.R. 968 (D. Colo. 1992); Bankruptcy Case No. 89-B-12597-A

Claude France, a licensed C.P.A., filed a voluntary petition under Chapter 7. His bankruptcy filing was caused by the loss of his public accounting practice and a worker's compensation award imposed against him personally, following the murder of Linda Holt, a C.P.A. employed by him.

Linda Holt was murdered on March 19, 1987. At the time of Ms. Holt's death, Mr. France's worker's compensation insurance had lapsed and by oversight had not been replaced. Mr. Holt, the widower of Ms. Holt, obtained an award under the Colorado Workman's Compensation Act against Mr. France for penalties, death benefits, funeral benefits, and weekly payments of more than \$300.00 for the remainder of Mr. Holt's life.

After the filing of the bankruptcy, Mr. Holt initiated an adversary proceeding to determine the dischargeability of the worker's compensation award under 11 U.S.C. § 523(a)(2), (4) and (6). Trial was conducted before the Honorable Barry S. Schermer (sitting by designation) who determined that the entire award was dischargeable pursuant to 11 U.S.C. § 523(a)(2), (4) and (6). The trial court's decision was appealed by Mr. Holt and upheld by Judge John L. Kane, Jr. on all grounds.

Significance of the Case: This case was of first impression in the 10<sup>th</sup> Circuit on the issue of dischargeability of worker's compensation awards.

Dates of Litigation and Court Before Whom Case was Pending: Trial was held on July 30, 1990:

- United States Bankruptcy Court: The Honorable Barry S. Schermer, sitting by designation
- Appellate Oral argument April 8, 1992
- United States District Court: The Honorable John L. Kane, Jr.

Nature of Participation, Parties and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Claude France	Marcia S. Krieger (represented the Debtor in Chapter 7 and Adversary Proceeding)	
Michael Holt	Randy Lee Williams, Esq.	221 East 29 <sup>th</sup> Street, Suite 218 P.O. Box 801 Loveland, CO 80539

- 5) *Cordillera Corporation v. Nu-West, et al.*, Case No. 86-CV-8727, District Court, City and County of Denver, State of Colorado; Case No. 87CA1679, Court of Appeals, State of Colorado.

I represented Cordillera Corporation ("Cordillera") which brought suit to quiet title to 31 acres in Adams County, or alternatively, to recover for breach of contract against Nu-West to whom it had sold the property for development. The property included certain parcels designated as school sites. The terms of the conveyance required reconveyance of such sites to Cordillera if the property was not developed or schools not built. Defendants, other than Nu-West, were joined or intervened as parties claiming an ownership interest in the property.

In 1983, without any notice to Cordillera, Nu-West sold the property to San Marino Savings & Loan Association ("San Marino"). San Marino agreed in its written contract with Nu-West to indemnify Nu-West for all obligations to Cordillera. San Marino was then taken over by the Federal Savings & Loan Insurance Corporation ("FSLIC") as Conservator and then Receiver.

Trial was scheduled for September 15, 1987. The FSLIC filed a motion to dismiss in April, 1987, alleging that the court lacked subject matter jurisdiction due to failure of all parties to exhaust administrative remedies in the FSLIC claims process. Cordillera opposed the motion, relying upon decisions from the Circuit Court of Appeals of the Ninth Circuit, District Courts of Utah and Florida. Contrary authority arose from decisions of the United States Court of Appeals in the Fifth Circuit and the Seventh Circuit. On July 29, 1987, the Trial Court dismissed all claims between the parties for lack of subject matter jurisdiction.

Cordillera filed its Motion to Reconsider which was denied September 17, 1987. Cordillera then appealed to the Colorado Court of Appeals and asserted its claim in the FSLIC claims process.

Prior to determination of the appeal, the United States Supreme Court rendered its decision in *Coit Independence Joint Venture v. The Federal Savings and Loan Insurance*

*Corporation as Receiver of First South, F.A.*, \_\_\_\_ U.S. \_\_\_\_, 109 S. Ct. 1361, 103 L.Ed.2d 602(1989), which was dispositive of the issue of whether the statutory mandate requiring a creditor was required to submit its state law claims against a failed savings and loan association under a FSLIC receivership to FLIC for resolution prior to determination of such claims by a court of appropriate jurisdiction. The United States Supreme Court adopted the reasoning of *Morrison-Knudsen Co., Inc. v. CHG Intern, Inc.*, 811 F.2d 1209 (9<sup>th</sup> Cir. 1987), and concluded that FSLIC was not granted exclusive jurisdiction to adjudicate claims involving failed thrifts.

Following the ruling by the United States Supreme Court in *Coit, supra*, Cordillera settled its claim with FSLIC.

Significance of the Case: This action involved difficult issues pertaining to future interests in real property and interpretation and analysis of the constitutional aspect of statutory authority of the FSLIC to administer claims. While this case did not create new precedent in Colorado, ultimately, the position argued by Cordillera became precedent through its adoption into the United States Supreme Court's opinion in *Coit, supra*.

Dates of Litigation and Court Before Whom Case was Pending:  
May, 1986 - June, 1989

- District Court for the City and County of Denver, State of Colorado: The Honorable Clifton A. Flowers
- The Colorado Court of Appeals

Nature of Participation, Parties and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Cordillera Corporation	Marcia S. Krieger (sole counsel and then assisted by co-counsel with Edwin Kahn)	
	Edwin S. Kahn (entered case during 1988 as co-counsel)	1441 18 <sup>th</sup> Street, #300 Denver, CO 80202 (303) 296-9412
Nu-West	Edward A. Pluss, Esq. (Haligman & Lottner, P.C.)	1741 High Street Denver, CO 80218 (303) 329-0900
School District No. 1	Michael H. Jackson, Esq. (Semple & Jackson)	5700 E. 6 <sup>th</sup> Avenue Denver, CO 80220 (303) 399-4220



City and County of Denver	Linda A. Surbaugh, Esq. (Opperman & Associates, P.C.)	Unknown
San Marino/FSLIC	Wiley Y. Daniel, Esq. Joanne R. Underhill (Popham, Haik, Schnobrich & Kaufman, Ltd.)	U.S. District Courthouse 1929 Stout Street, C-218 Denver, CO 80294 (303) 844-2170

6) *Glen E. Keller, Jr., Trustee for the Liquidation of the Business of Blinder, Robinson & Co., Inc., Plaintiff/Appellee v. Linda M. Blinder, Larry P. Blinder, Martin S. Blinder, Individually and as Trustee of the Blinder Trust, Janet W. Vlinder, Individually and as Trustee of The Blinder Trust, The Blinder Trust, Lillian Vlinder, Individually and as Trustee of The Lillian Blinder Trust, and The Lillian Blinder Trust, Defendants/Appellants*, Case No. 92-K-2344.

An Adversary Proceeding was initiated as part of the SIPA (Securities and Investor Protection Act) liquidation of Blinder, Robinson, Inc. Trustee Keller sought to recover post-petition payments made by the Lillian Blinder Trust as property of the Blinder, Robinson Estate based upon a default judgment in another Adversary Proceeding against Meyer and Lillian Blinder declaring them to be alter-egos of Blinder, Robinson, Inc.

I represented Martin Blinder, his wife, Janet Blinder, and a beneficial trust for their family – the Blinder Trust. Before filing an Answer on their behalf, I moved to dismiss the Adversary Proceeding for lack of subject matter jurisdiction due to constitutional infirmities in SIPA. SIPA contains a broad jurisdiction grant to the Bankruptcy Court which is almost identical to that which was found unconstitutional by the United States Supreme Court in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982).

The Motion to Dismiss was denied. Ultimately, summary judgment was entered in favor of the Trustee by the Bankruptcy Court. The appeal addressed the constitutionality of the jurisdictional grant to the Bankruptcy Court under SIPA as well as the propriety of entry of the summary judgment. Due to my appointment to the bench, this matter was referred to substitute counsel.

Significance of the Case: The constitutionality of the jurisdictional grant under SIPA has never been analyzed outside of the Tenth Circuit. One United States District Court opinion in Colorado has tangentially addressed the issue. The issue has also been raised in a different and broader argument in a case currently pending before the Tenth Circuit Court of Appeals.

Dates of Litigation and Court Before Whom Case was Pending:  
April - November, 1992

– Trial Court - United States Bankruptcy Court for the District of Colorado: The Honorable Roland J. Brumbaugh

-- Appeal Court - United States District Court: The Honorable John L. Kane, Jr.

Nature of Participation, Parties and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Linda M. Blinder	Steven Taffet, Esq.	2305 Broadway Boulder, CO 80304 (303) 499-2830
Glen E. Keller, Jr., Trustee	Glen E. Keller, Esq. (Davis, Graham & Stubbs)	1550 17 <sup>th</sup> Street, #500 Denver, CO 80202 (303) 892-7396
7) <i>Christine J. Jobin, Trustee of the Bankruptcy Estate of M &amp; L Business Machine Co., Inc., Plaintiff v. Resolution Trust Corporation, as Conservator of Capitol Federal Savings and Loan Association of Denver, as Receiver of Capitol Federal Savings and Loan Association of Denver, as Conservator of Capitol Federal Savings and Loan Association, and as Receiver of Capitol Federal Savings and Loan Association, Defendant, Civil Action No. 92-K-1467</i>		

Consolidated with:

*Resolution Trust Corporation, as Receiver of Capitol Federal Savings and Loan Association, Plaintiff v. M & L Business Machine Co., Inc., Defendant, Civil Action No. 92-K-1623*

This was a consolidated action arising from the M & L Business Machine Co. Chapter 7 bankruptcy, of which Christine Jobin was the Trustee. Prior to the bankruptcy, Resolution Trust Corporation (RTC) intervened in the affairs of Capitol Federal Savings and Loan Association which was owed in excess of \$5 million by M & L.

I was lead counsel representing the RTC. In this action, the RTC sought to determine the nature, extent and amount of the lien securing its claim. The Trustee sought to avoid and recover all principal and interest payments made by M & L to Capitol Federal and to the RTC prior to the bankruptcy filing, all M & L overdrafts honored by Capitol Federal before RTC intervention, and to subordinate RTC's claim in the bankruptcy case. The Trustee's claims are premised on M & L's pre-petition conduct of "Ponzi" and "check kiting" schemes. The Trustee asserted that the pre-petition M & L payments of approximately \$4 million are recoverable in cash from RTC.

This case framed the inevitable interplay between United States Title 11 (Bankruptcy Code) and United States Title 12 (FIRREA, which governs the administration and liquidation of troubled financial institutions). It highlighted issues of competing federal policy in bankruptcy and the liquidation of lending institutions.

At the time my appointment was pending was RTC's Motion for Partial Summary Judgment based upon the D'Oench, Duhme Doctrine and 12 U.S.C. § 1823(e) which based claims arising from events prior to RTC intervention unless evidenced in official loan records. This case also required determination of whether claims by a debtor in bankruptcy or Trustee against a failed lending institution are recoverable from RTC as Receiver in cash or only as a claim in the Receivership. Due to the relatively recent enactment of FIRREA, these issues were novel to this district and only sparsely addressed elsewhere.

Dates of Litigation and Court Before Whom Case was Pending: This case was undertaken by substitute counsel upon my appointment to the bench.

— United States District Court: The Honorable John L. Kane, Jr.

Nature of Participation, Parties and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Christine J. Jobin, Trustee	Christine J. Jobin, Esq. (Katch, Sender, Wasserman & Jobin)	1999 Broadway, #2305 Denver, CO 80202 (303) 296-1999
Resolution Trust Corporation	Marcia S. Krieger (Lead Counsel) Maria J. Flora, Esq. (Co-Counsel) (Gorsuch, Kirgis, Campbell, Walker and Grover)	1401 17 <sup>th</sup> Street, #1100 Denver, CO 80202 (303) 299-8900

- 8) *In re FNRS Financial Corporation, a California corporation, Debtor*, Case No. 92-18774 CEM

*FNRS Financial Corporation, Plaintiff v. Resolution Trust Corporation, acting in its capacity as Receiver and Conservator for certain institutions, Defendant*, Adversary Proceeding No. 93-1166 CEM

This matter arose in a Chapter 11 case. FNRS was a Debtor-in-Possession which, prior to the bankruptcy, had contracted to service loans for several lending institutions for which RTC is a Receiver. The contract was also terminated prior to the bankruptcy filing. Both parties contend the other was in breach. FNRS initiated the action to recover over \$400,000.00 in funds it had escrowed from the loans it serviced for RTC. FNRS also sought a determination that it owed RTC nothing, or if RTC had a valid claim that such claim should be equitably subordinated.

Like the M & L case above, this matter involved contradictory and competing provisions of Title 11 and Title 12 of the United States Code. The central issue of the Motion

to Withdraw the Reference to the Bankruptcy Court and RTC's underlying Motion to Dismiss was FIRREA's requirement that all claims against RTC be submitted to RTC's administrative claims process before the court could assume jurisdiction. The issues of withdrawal and FIRREA's requirement of exhaustion of administrative remedies in a bankruptcy context were new to the district.

Dates of Litigation and Court Before Whom Case was Pending: At the time of my application for the vacancy on the Bankruptcy Court, a trial date had not yet been set.

— United States District Court: The Honorable Zita L. Weinshienk

1) *In re Smartt Construction Co.*, 88 B 17916E

Smartt Construction Co., Inc. filed a voluntary Chapter 7 petition on December 30, 1988. James R. Chadderdon was appointed Trustee for the estate and initially appointed Trustee for the estate of B. H. Smartt, who owned a majority of stock in Smartt Construction Co. Mr. Smartt's personal and business interests were deeply intertwined.

I was retained by Mr. Chadderdon as Trustee in the Smartt Construction Co. case to analyze and pursue avoidance claims pursuant to 11 U.S.C. §§ 547, 548 and 550. I investigated, evaluated and advised the Trustee with regard to 21 possible adversary proceedings (law suits) and initiated or defended seven:

*Chadderdon v. Burke Properties, et al.*, Adv. Pro. No. 91-1126 CEM;  
*Chadderdon v. Estate of Eugene O'Perkins, et al.*, Adv. Pro. No. 91-1127 PAC;  
*Chadderdon v. William M. Kennedy*, Adv. Pro. No. 91-1128 DEC;  
*Chadderdon v. Berniges, Berg, Roth & Diver, P.C.*, Adv. Pro. No. 91-1121 SBB;  
*Chadderdon v. Bruce Wright, P.C.*, Adv. Pro. No. 91-1117 SBB;  
*Weinman v. Chadderdon*, Adv. Pro. No. 91-1119 PAC;  
*Chadderdon v. Weinman*, Adv. Pro. No. 91-1121 SBB;  
*Chadderdon v. Smartt-Poleson*, Adv. Pro. No. 91-1122 SBB.

I handled these seven simultaneous matters along with a full caseload as a solo practitioner with the assistance of a law clerk and paralegal. All required discovery and extensive pre-trial preparation including briefing on relatively arcane issues. Several were tried, several settled on the eve of trial. One resulted in an appeal.

Due to economies required in representing a bankruptcy estate, I was compelled to maximize efficiency and minimize cost. Between January 31, 1991 and January 20, 1993, more than \$130,000.00 was recovered for the estate at a cost of approximately \$67,000.00. As in all bankruptcy cases where one represents a Trustee, my fees and expenses were noticed to creditors without objection and were allowed in full.

Dates of Litigation and Court Before Whom Case was Pending:

- Retained to represent the Chapter 7 Trustee, James Chadderdon on January 15, 1991, in the main case presided over by Bankruptcy Judge Charles E. Matheson.

<u>Adversary Proceeding</u>	<u>Bankruptcy Court or District Court Judge for the District of Colorado</u>	<u>Hearings/Trials</u>
<i>Chadderdon v. Burke</i> (appealed to the District Court)		January 27, 1991 - settled
<i>Chadderdon v. Perkins</i>	Patricia Ann Clark	August 5, 1991 - settled
<i>Chadderdon v. Kennedy</i>	Donald E. Cordova	December 17, 1991
<i>Chadderdon v. Berniger, et al.</i>	Sidney B. Brooks	December 16, 1991
<i>Chadderdon v. Wright, P.C.</i>	Sidney B. Brooks	Settled before trial.
<i>Weinman v. Chadderdon</i>	Patricia Ann Clark	Consolidated and settled.
<i>Chadderdon v. Weinman</i>	Sidney B. Brooks	Consolidated and settled.

Nature of Participation, Parties and Counsel:

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Burke Properties and William Kennedy	Douglas Jessop (Holden & Jessop, P.C.)	303 E. 17 <sup>th</sup> Ave., #930 Denver, CO 80203 (303) 860-7700
	Glenn Merrick (Davis, Graham & Stubbs)	1700 Lincoln Street, #222 Denver, CO 80203 (303) 866-9413
Estate of Eugene O. Perkins	Donald LaMora	P.O. Box 38609 Colorado Springs, CO 80987 (719) 473-1818
Berniger, Berg, Roth & Diver, P.C.	Michael A. Berniger	90 Cascade, #310 Colorado Springs, CO 80901 (719) 475-9900
Bruce Wright, P.C.	Edwin G. Perlmutter (Berenbaum & Weinshienk)	370 17 <sup>th</sup> Street #2600 Denver, CO 80202 (303) 823-0800
Jeffrey Weinman (substitute Trustee for B.H. Smartt case)	Christine Jobin (Katch, Wasserman & Jobin)	475 17 <sup>th</sup> Street #1400 Denver, CO 80202 (303) 296-1390
	L. Louise Romero (rep. Creditor Mark Blough)	University of Colo. Campus Box 13 203 Regent Admin. Center Boulder, CO 80309 (303) 492-7481

10) *Vogel v. Carolina International, Inc.*, 711 P. 2d 708 (Colo. App. 1985)

This was an action for conversion and outrageous conduct by Carolina International in repossession of business property securing a debt. The facts were egregious, but the law in Colorado was unclear. Carolina International bought cabinets from a cabinet maker, Gary Vogel, who did business as KitchenKraft. To facilitate its supply, Carolina International made a loan to Vogel secured by all of his equipment and inventory. When Vogel defaulted, Carolina International set up a meeting with him at its plant. Meanwhile, it had its employees

go to Vogel's facility where they repossessed all of Bogel's equipment and inventory. Vogel sued for wrongful repossession and outrageous conduct.

Tried to a jury, verdict was entered against Carolina International awarding actual damages, punitive damages and an award for emotional distress. The judgment was affirmed on appeal.

As a young lawyer representing Carolina International, I was disappointed at losing both before the jury and upon appeal. But, with reflection, it is apparent that this case clarified Colorado law in a number of respects. The Court of Appeals held that:

- 1) Wrongful acts in a commercial context can give rise to tort liability;
- 2) An award of damages for emotional distress was not duplicative of the award for outrageous conduct;
- 3) Awards to an individual can be made when the injury is inflicted on the corporate entity of which he is the sole shareholder, officer and director.

Dates of Litigation and Court before Whom Case was Pending:

- District Court, Weld County, Colorado: Honorable Robert A. Behrman
- Colorado Court of Appeals (1985)

<u>Party</u>	<u>Counsel</u>	<u>Current Address and Telephone Number</u>
Carolina International	Trial Court: Co-counsel with another attorney whose name I cannot recall	
	Appeal: Co-counsel with Susan M. Thevenet (Smart, DeFurio, Eklund & McClure)	Holme, Roberts & Owen 1401 Pearl Street Boulder, CO 80302 (303) 444-5995
Gary Vogel and Kitchen Kraft	Charles S. Bloom (Wood, Herzog, Osborn & Bloom, P.C.)	Osborn & Bloom, P.C. 217 W. Olive St. Ft. Collins, CO 80521 (970) 484-2928

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The extra-curricular activities which I believe to be most significant are those related to improvement and support of the judicial system. These activities fall into three groups -- committee work, judicial administration and teaching.

I am honored and pleased to serve at Justice Rehnquist's request on the Committee on Bankruptcy Administration of the Judicial Conference and its subcommittees on mass tort litigation and bankruptcy court staffing assessments. For the National Conference of Bankruptcy Judges, I have served on and chaired the International Relations Committee, which this year will publish (in conjunction with the Federal Judicial Center) a monograph on international insolvency issues. At the request of the District Court, I assisted in the formation of the Faculty of Federal Advocates, organization for attorneys practicing in federal court, and was a founding member and chair of the Colorado Judicial Coordinating Council comprised of state and federal judges. During my tenure, the group sponsored bankruptcy law programs for state judges and supplemented a state court bench book with information relative to the interplay of state and federal law. I have also served on the long range planning and automation committees for the bankruptcy court and the district's security committee. For the Colorado Bar Association, I particularly enjoyed serving as chair of the Committee on Court reform and on the Professionalism Committee.

As chief judge of the bankruptcy court, I have focused upon improving communication between bench and bar through the creation of and reference of issues to a bar liaison committee, development and utilization of a court website and electronic filing and case management to be implemented in early 2002. For administration of cases assigned to me, I use published procedures, a data base of relevant legal authority and a system of forms and checklists to ensure consistency.

I also have enjoyed teaching, both to legal professionals and to lay people. Our court has a tradition of providing the bar with legal summaries and updates on a quarterly basis. Twice I have had the pleasure of teaching fellow bankruptcy judges for the Federal Judicial Center. This is the third fall semester I have taught as an adjunct professor at the University of Colorado School of Law. Each fall, I also present a brief course on civic rights and responsibilities to boyscouts. To the extent time allows, I enjoy coaching and presiding in student mock trial programs.

Before being appointed to the bench, I had a civil litigation practice, but I must confess that the most significant cases I handled were those which settled before trial, saving both the parties and the judicial system unnecessary expense. Unfortunately, I have inadequate records to list all such matters. However, there are a number of successfully negotiated Chapter 11 reorganizations: *In re Data Ray, Inc.* (Chapter 11 case dismissed after settlement), Case No. 85-4278-J; *In re Lederman Enterprises, Inc.* (confirmed Chapter 11



plan), Case No. 87-10147; *In re Consolidated Pet Foods, Inc.* (confirmed Chapter 11 plan), Case No. 89-06041. I was the debtor's sole or lead counsel in each of these cases.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**  
  
None.
2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**  
  
I will continue to adhere to all guidelines and restrictions imposed on federal judges. I will continue the practice I have observed for the past seven years. My staff (and now a court computer program) is supplied with a list of my investments, former clients, family members and individuals or entities whose involvement in a controversy would require my recusal. My staff, the computer program and I constantly scan matters to identify such conflicts. Other than the list, I am unaware of litigation or financial arrangements which would present potential conflicts of interest.
3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**  
  
No.
4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**  
  
See attached Financial Disclosure Report.
5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**  
  
Attached.
6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**  
  
No.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	23,270.00	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	319,000.00	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends	10,000.00	Unpaid income tax	
Due from others	2,900.00	Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	90,000.00
Real estate owned-add schedule	490,000.00	Chattel mortgages and other liens payable	18,000.00
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	84,500.00	Revolving debt	10,300.00
Cash value-life insurance			
Other assets itemize:			
		Total liabilities	118,300.00
		Net Worth	811,370.00
Total Assets	929,670.00	Total liabilities and net worth	929,670.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	-0-	Are any assets pledged? (Add schedule)	1 vehicle
On leases or contracts	-0-	Are you defendant in any suits or legal actions?	No
Legal Claims	-0-	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	-0-		
Other special debt	-0-		

## ATTACHMENT TO FINANCIAL NET WORTH STATEMENT

Real Estate

Residence	\$300,000.00
-----------	--------------

Lake Cabin	<u>190,000.00</u>
	\$490,000.00

Autos

Camry	\$20,000.00
-------	-------------

Ford	9,000.00
------	----------

Van	2,000.00
-----	----------

Boat	<u>3,500.00</u>
	\$34,500.00

Household	
Property	<u>50,000.00</u> est.
	\$84,500.00

Securities (as of April 27, 2001)*Personal:*

•	Money Market	\$17,833.86
•	Equities	
	- Avaya, Inc.	
	- Lucent Technologies	397.92
•	Tax Exempt Bond	
	- UTS Colo. Insured	
	Trust	1,163.55
•	Mutual Fund	
	- Franklin Tax Free	
	Trust	<u>42,651.21</u>
		\$62,046.59
•	American Century	
	Money Market (3/31)	12,471.44
•	Thrift Savings (4/30)	92,519.17
•	Children's Accounts	
	(Approximately)	1,200.00

*IRA/SEP:*

•	Money Market	\$3,359.26
•	Mutual Funds	
	- Standard Federal	
	Bank	70,022.40
	- LaSalle Bank	77,021.87
•	Taxable Bonds	
	- Alliance Primer Growth	
	- Delaware Group Trend	
	- Liberty Funds	
	- Lord Abbett Funds	
	- Nations Fund	
	- Oppenheimer Fund	
	- Pimco Funds	
	- Putnam Funds	
	- Pioneer Funds	

AO-10 (w)  
Rev. 1/2000FINANCIAL DISCLOSURE REPORT  
Nomination ReportReport required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Krieger, Marcia S.	2. Court or Organization U.S. District Court, Colorado	3. Date of Report 09/14/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Bankruptcy Judge	5. Report Type (check type) X Nomination, Date 09/10/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 08/31/2001
7. Chambers or Office Address U.S. Bankruptcy Court 721 Nineteenth Street, Rm. 543 Denver, CO 80202-2508	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.		

## I. POSITIONS (Reporting individual only; see pp. 9-13 of instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Officer; Board Member	Kenya Children Foundation
2	
3	

## II. AGREEMENTS (Reporting individual only; see pp. 14-16 of instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

## III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2000	LindWaldock & Co.	
2 2000	Self-employed (attorney)	
3 2000	University of Colorado School of Law - 1 semester as Adjunct Lecturer	\$4,805.00
4		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Krieger, Marcia S.	09/14/2001

**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	National Conference of Bankruptcy Judges	Oct. 18-21, 2000, Boston, MA. Annual Conference (transportation, meals and hotel accommodations).
2	National Conference of Bankruptcy Judges	April 5-8, 2001, Dallas, TX. Mid-year Conference (Transportation, meals and hotel accommodations).
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	<input checked="" type="checkbox"/> NONE		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	<input checked="" type="checkbox"/> NONE		
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Krieger, Marcia S.	Date of Report 09/14/2001
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Arapahoe Credit Union	A	Interest	K	T					
2 Consolidated Federal Credit Union	A	Interest	J	T					
3 First Nat'l Bank of Cook		None	J	T					
4 Centennial Gov't Trust - A.G. Edwards	B	Dividend	K	T					
5 Colorado Insured Municipal Trust	A	Interest	J	T					
6 Boeing Company - Common Stock	A	Dividend			Sold	9/12	J	A	
7 Franklin Tax Free Trust	C	Dividend	K	T					
8 Pfizer Inc. - Common stock					Sold	8/23	J	B	
9 IRA/SEP	D	Dividend/ Int	M	T					
10 -- Centennial Gov't Trust									
11 -- Alliance Premier Growth Fund					Bought	11/01	J		
12					Bought	12/01	J		
13					Bought	01/05	J		
14 -- Delaware Group Trend Fund - Class C					Bought	11/01	J		
15					Bought	12/01	J		
16					Bought	01/05	J		
17 -- Liberty Funds Trust I - Class C					Bought	11/01	J		
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Krieger, Marcia S.	Date of Report 09/14/2001
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VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18					Bought	12/01	J		
19					Bought	01/05	J		
20					Div/Reinvest	01/19	J		
21					Div/Reinvest	02/20	J		
22					Div/Reinvest	03/20	J		
23					Div/Reinvest	04/20	J		
24					Div/Reinvest	05/31	J		
25					Div/Reinvest	06/29	J		
26					Div/Reinvest	07/31	J		
27 -- Liberty Funds Trust III - Class C					Bought	11/01	J		
28					Bought	12/01	J		
29 -- Lord Abbett Mid Cap Fund - Class C					Bought	12/01	J		
30					Bought	01/05	J		
31					Div/Reinvest	01/23	J		
32 -- Lord Abbett Aff Fd Inc - Class C					Bought	11/01	J		
33					Bought	01/05	J		
34					Div/Reinvest	02/14	J		
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 I=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Krieger, Marcia S.	Date of Report 09/14/2001
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VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-I)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income/assets, or transactions.)									
35					Div/Reinvest	08/21	J		
36 -- Nations Fund, Inc. I'll value Fund INV - Class C					Bought	11/01	J		
37					Bought	12/01	J		
38					Bought	01/05	J		
39					Div/Reinvest	05/18	J		
40 -- Oppenheimer Term Gov and Pd - Class C					Bought	11/01	J		
41					Bought	12/01	J		
42					Bought	01/05	J		
43					Div/Reinvest	01/31	J		
44					Div/Reinvest	02/25	J		
45					Div/Reinvest	03/30	J		
46					Div/Reinvest	04/30	J		
47					Div/Reinvest	05/31	J		
48					Div/Reinvest	06/29	J		
49					Div/Reinvest	07/31	J		
50 -- Pimco Funds Pac Invnt - Class C					Bought	11/01	J		
51					Bought	12/01	J		

1 Inr/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000  
F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001 or more

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
(Col. C1, D3) O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000 S=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market  
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Krieger, Marcia S.	09/14/2001

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-E)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month: Day	(3) Value Code (J-P)	(4) Gain Code (A-E)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
52					Bought	01/05	J		
53					Div/Reinvest	01/31	J		
54					Div/Reinvest	02/28	J		
55					Div/Reinvest	03/30	J		
56					Div/Reinvest	04/30	J		
57					Div/Reinvest	05/31	J		
58					Div/Reinvest	06/29	J		
59					Div/Reinvest	07/31	J		
60 -- Pioneer Emerging Mkts -- Class C					Bought	11/01	J		
61					Bought	12/01	J		
62					Bought	01/05	J		
63 -- Putnam F'l Growth Fd					Bought	11/01	J		
64					Bought	12/01	J		
65					Bought	01/05	J		
66 -- LaSalle Bank CD									
67 -- Standard Federal Bank CD									
68					Redemption	05/23	K		
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more D=\$5,001-\$15,000 E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Krieger, Marcia S.	Date of Report 09/14/2001
	(Includes those of spouse and dependent children. See pp. 36-37 of Instructions.)	

VII. Page 5 INVESTMENTS and TRUSTS -- Income, value, transactions

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-F)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 American Century Prime Money Market	8	Dividend	J	T					
70 Rental Property, St. Louis County, MN	C	Rent	M	W					
71 Lien on former spouse's residence		None	J	T					
72									
73									
74									
75									
76									
77									
78									
79									
80									
81									
82									
83									
84									
85									

1 Int/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 Q=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$15,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Meth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Kriegar, Marcia S.	09/14/2001

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

*(Indicate part of report.)*

VIII. No. 9 prior report -- no longer meets minimum requirements.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Kriegel, Marcia S.	09/14/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Marcia S. Kriegel Date 9/14/01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

When in practice, I routinely accepted *pro bono* representation, provided legal advice for bar sponsored "call in" help programs, law day street consultations and court-sponsored mediation, and I was active in presenting legal education programs in schools, to scout troops and to adult groups. Though I have kept no records of these activities, I would guess these activities average 100 hours a year or more.

As a judge, I have continued to provide legal education to public groups, scout troops and schools, and I have participated as a judge in high school mock trial competitions and the We the People competition. In addition, I am a board member and Vice President of the Kenya Children Foundation, a private foundation that funds and builds homes and schools for children in Kenya who suffer from AIDS and/or otherwise have no means of support. I am a member of Zonta International and Zonta Club of Denver II, which is a service organization dedicated to improving the economic status of women worldwide. Through Zonta, I have participated in activities to support battered women's shelters and hosted "Senior Law Day" which is a free legal fair offering legal information on a multitude of issues of concern to seniors. Again, I have not kept time records for these activities. I would estimate that they take 100-200 hours per year.

In the courtroom I provide all *pro se* litigants with a list of available sources for low-or no-fee representation, conduct discharge advisement hearings for *pro se* debtors and have requested the bar liaison committee to develop a *pro bono* program for the bankruptcy court.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

So far as I am aware, I neither belong nor have belonged to an organization meeting the above description. Indeed, upon joining Zonta, the Colorado Women's Bar Association and the National Association of Women Judges (all organizations whose

purpose is aligned with interests of women and children) I verified that there was no formal or practical restriction on membership.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

A selection committee was appointed by U.S. Senators Allard and Campbell in late February or early March, 2001. I submitted a written application to the committee in late March, 2001, was interviewed by the committee and then by Senator Allard. Nine names were sent by the Senators to President Bush. I was interviewed by members of the Office of White House Counsel on May 30, 2001, which interview was followed by an investigation by the Federal Bureau of Investigation. I was nominated by President Bush on September 10, 2001.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solving rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I accept and adhere to the traditional role of the federal courts as set forth below:

Federal courts are courts of limited jurisdiction, restricted to determining cases and controversies specifically authorized by statute, the United States Constitution or treaty. In exercising jurisdiction over authorized subject matter, the federal court is further restricted to determination of ripe claims brought by parties with appropriate standing. Consistent with the constitutional separation of powers among the three branches of the federal government, a federal court must enforce the law in accordance with legislative enactment, applicable rules and the doctrine of *stare decisis*.



Senator DURBIN. Thank you very much.  
Mr. Mahan?

**STATEMENT OF JAMES C. MAHAN, NOMINEE TO BE DISTRICT  
COURT JUDGE FOR THE DISTRICT OF NEVADA**

Judge MAHAN. Thank you, Mr. Chairman, and again, I have no opening statement other than to thank you and Senator Leahy and the Committee for conducting this hearing so expeditiously.

I would like to introduce my wife and my assistant. My wife, Eileen, is seated in the back here, and next to her is my longtime, or some might say long-suffering assistant, Jeri Winter, and I would like to introduce her, as well.

Thank you, Mr. Chairman.

[The biographical information of Judge Mahan follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
  
James Cameron Mahan  
James C. Mahan  
Jim Mahan
2. Address: List current place of residence and office address(es).  
  
Residence: Las Vegas, Nevada  
Business: 200 South Third Street, Dept. XII,  
Las Vegas, Nevada 89155-2372
3. Date and place of birth. 12/16/43 El Paso, Texas
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Eileen A. Casale, homemaker
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
September, 1961 to May, 1965  
Morris Harvey College (now the University of Charleston),  
Charleston, West Virginia 25304  
Graduated with honors; Bachelor of Arts degree  
conferred in May, 1965; majors were English and history;  
minors were French and philosophy  
  
August, 1965 to February. 1966  
University of Virginia Graduate School of Arts and Sciences  
Charlottesville, Virginia; no degree conferred  
  
August, 1970 to May, 1973  
Vanderbilt University Law School,  
Nashville, Tennessee, Doctor of Jurisprudence conferred

May, 1973; class rank, top one-third.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

June, 1965 to August, 1965, Connelly Containers, Cambridge, Maryland; employed as laborer, corrugator.

March 23, 1966 to December, 1969, U.S. Navy, various supervisors. See answer to no. 7.

December, 1969 to July, 1970. Skagg's Drug Centers, Las Vegas, Nevada. Employed as management trainee.

May - August, 1972, Law Clerk at Wright & Reed, 108 Spring Street, Murfreesboro, Tennessee. Employed as law clerk/legal researcher.

Graduated law school 1973 and moved to Las Vegas, Nevada

1973 - 1975, Law Clerk and attorney at Lee & Beasey, Las Vegas, Nevada, employed as law clerk/legal researcher and then associate attorney

June, 1975 - August, 1982, Attorney at John Peter Lee, Ltd., (formerly Lee and Beasey), employed as attorney, member of the firm

September, 1982 - February, 1999, Shareholder and President of Mahan & Ellis, Chartered., 510 South Ninth Street, Las Vegas, Nevada, 89101. Founder of firm, senior partner, attorney.

March, 1996 to present. Member of Board of Directors of Habitat for Humanity

March, 1999 to present. District Court Judge, Eighth Judicial District Court, Department XII, 200 South Third Street, Las Vegas, Nevada 89155-2372.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

U.S. Navy veteran from March 23, 1966 to March 22, 1972; on active duty from March 23, 1966 to December 1, 1969. Honorable discharge March 22, 1972; Vietnam era, attained rank of Yeoman Second Class (E-5) effective November 16, 1967; Service number of B20-71-10; U.S. Naval Communications Station Honolulu, USS Kilauea (AE26)

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I received an "A" rating from Martindale-Hubbell in mid 1993 and retained that rating until I became a Judge in 1999.

Named to Who's Who in America, Who's Who in the World and Who's Who in American Law.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association, American Trial Lawyers Association, Nevada Trial Lawyers Association, Nevada Bar Association and Clark County Bar Association, Chairman of the Clark County Regional Judicial Council, Member of the State Judicial Council.

I have been a member of the Clark County Bar Association community services committee from 1996 to present. This committee is responsible for organizing and coordinating all community services projects for the county bar association and includes the following subcommittees upon which I have served: (a) Habitat for Humanity subcommittee, 1997 and 1999; and (b) Chairman, mock trials subcommittee, 1998.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Hispanics in Politics, Active Republican Women, American Legion, National Organization for Women, National Rifle Association

No others.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

1974 admitted to the bar in Nevada in both the U.S. District Court, State of Nevada and District Court, Clark County, Nevada;

1975 admitted to practice before the U.S. Court of Appeals for the Ninth Circuit;

1979 admitted to U.S. Tax Court;

1980 admitted to U.S. Supreme Court.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have no published articles. I have given speeches during my political campaigns and I have given speeches to civic organizations. However, I do not have any formal written outlines or speeches.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

My general health is good. I had a physical examination June 5, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed by Nevada Governor Kenny Guinn to the Eighth Judicial District Court, Department XII in February, 1999.

On November 7, 2000, I prevailed in the General Election and retained my seat.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) and (3): Copies of my ten most significant opinions are attached; none was officially reported. Those opinions are as follows:

*Venetian Casino Resorts, L.L.C. vs. County of Clark, Las Vegas Convention and Visitors Authority, et. al., Culinary Workers Union Local 226 and Bartenders Union Local 165, intervenors, Case No. A405585*

*Mercy, Inc., dba American Medical Response vs. Clark County, Southwest Ambulance-Las Vegas, Inc., intervenors, Case no. A412294*

*Renee L. Watt and Richard James Watt vs. Stacey Marie Botsford, Atlandia Design & Furnishings, Case No. A340580*

*Eugene J. Abels vs. GES Exposition Services, Inc., Viad Corp., and Matt Struckoff, Case No. A370361.*

*Nicole M. Turner vs. Progressive Casualty Insurance Company, et. al., Case No. A381688*

*Michael J. Anzalone vs. State of Nevada, Frankie Sue Delpapa, individually and in her official capacity; Office of the Attorney General for the State of Nevada, et. al., Case No. A384649*

*Debra Gauthier vs. The Las Vegas Metropolitan Police Department Civil Service Board, and Las Vegas Metropolitan Police Department, Case No. A395098*

*Mark Keller vs. Wet 'N Wild, Inc., Case No. A414589*

*County of Clark vs. Sun State Properties, Ltd., et. al. Case No. A346912*

*Fremont Street Experience Limited Liability Company vs. Herbert Pastor dba Herb Pastor Casino Enterprises, et. al. Case No. A423447*

(2) Attached are copies of appellate opinions reversing me. The first is Smeltzer vs. Employers Insurance Company of Nevada, Case no. 98-A-390098-C in which I upheld the worker's compensation board finding, based upon a statute; the supreme court reversed and remanded based upon an earlier interpretation of an earlier version of that statute. The second case is Maddox vs. Quon, Case no. 99-A-403739-C and is a mandamus petition in which I had rejected a motion to disqualify an attorney; the supreme court reversed, and I have since entered an order disqualifying the attorney in question. Neither was officially reported.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have not held any public office other than judicial.

Judges are elected in Nevada. I was a candidate for District Court Judge, Department XVII, Eighth Judicial District Court in 1998. I ran successfully through the primary election but lost in the general election 55% - 45%.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

June, 1973 to June, 1975, Lee & Beasey, Suite 920, Bank of Nevada Building, Las Vegas, Nevada; employed as law clerk/legal researcher and then associate attorney.

June, 1975 to August, 1982, John Peter Lee, Ltd., Suite 920, Bank of Nevada Building and Valley Bank Plaza, Suite 1501, Las Vegas, Nevada; attorney and member of the firm.

September, 1982 to February, 1999, Mahan & Ellis Chartered, Suite 1605, Valley Bank Plaza (until September, 1985) and 510 South Ninth Street, Las Vegas,



Nevada, founder, senior partner and attorney

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Initially, I practiced both civil and criminal law. I found that I enjoyed the variety and challenge of civil law and began to specialize in that area. For the first nine years of my practice (with Lee & Beasey/John Peter Lee) the firm was in what was a growth mode for Las Vegas at that time having grown to seven or eight lawyers along with appropriate researchers, staffing, etc. When I left the Lee firm to go out on my own, one of the members of that firm came with me and became my partner for the next 17 years. (He is the Ellis of Mahan & Ellis, Chartered). In 1985 we built our own building in downtown Las Vegas near most of the court houses. By 1982 I was practicing primarily civil litigation with an emphasis in business and commercial litigation. I have represented a number of small businesses, including several local banks who have since merged with larger, out of state banks. During that same time period I also served as an arbitrator, both as a member of a panel and as a single arbitrator. By the time of my departure from my firm in 1999 to take the bench, my firm was one of the more respected small firms in this state. We had become known in many areas including gaming law, business and commercial transactions and litigation, real property, receiverships, professional malpractice, gaming, arbitration, condemnation, estate planning, entertainment and sports law. Of course, as with any lawyer, you have friends and family who often need your help and you

find yourself in family court or traffic court on a moment's notice. I was no exception.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Young Electric Sign Company - fabricated many of the electronic signs for the casinos in Las Vegas and Reno

Nevada National Bank, First Security Bank and Pioneer Citizens Bank were all community banks located in Las Vegas

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently.

2. What percentage of these appearances was in:
  - (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.

(a) 10%

(b) 88%

(c) 2%

3. What percentage of your litigation was:
  - (a) civil;
  - (b) criminal.

(a) 85%

(b) 15%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

80 cases tried to judgment where I served in the role of chief counsel

5. What percentage of these trials was:
  - (a) jury;
  - (b) non-jury.
  - (a) 5%
  - (b) 95%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

A. Case in justice court; I do not recall the name; criminal complaint.

B. Mahlon Brown was the presiding justice of the peace. The opposing attorney was deputy district attorney Thomas R. Green, 400 East Stewart Avenue. 9<sup>th</sup> Floor, Las Vegas, Nevada, 89101. His telephone number is (702)229-6201. My client was a woman who had fallen in with a bad crowd, some of whom were involved in selling drugs. She and her child were visiting these friends. The police had the house under surveillance. They stopped a visitor to the house who had just left. They

searched him and found drugs. Accordingly, the arresting officers radioed the surveying officers and told them what they had found. Thereupon the surveillance officers approached the front door. One of the occupants saw them and yelled, "It's the cops!" The officers burst through the door and arrested all occupants, including the woman who would soon be my client. They placed her child in Child Haven.

I was a young attorney, and the senior partner assigned me this case with the comment, "Look at this. I think it has something to do with an illegal search or something."

I reviewed the police reports and concluded that the case did not involve an illegal search. The actions of the police did not seem right, but what was wrong? Certainly as the officers were approaching the house and someone recognized them, they acted appropriately in forcing their way into the house. What was wrong? I came into the office on a Sunday and reviewed the police reports, again and again. What was wrong with what the police did?

Finally, I analyzed the case this way: The only reason that the police were approaching the house where my client was visiting was to arrest the occupants. Under Nevada law, the police must have probable cause in order to effect an arrest. The fact that the officers found drugs on someone who had been at the house did not give them probable cause to believe that a crime had been committed at the house. Thus, they improperly put themselves into a position where an occupant recognized them and gave them an excuse to enter the house.

As a young attorney, I was not sure that my analysis was correct or how the judge would rule. To my surprise, Judge Brown agreed with me and dismissed the charges against my client.

The significance of this case is that this incident served as a wake-up call, and my client changed her behavior. She stopped seeing her associates and became a contributing member of society.

B. State v. Brennan. I represented the defendant Brennan in Las Vegas Justice Court, judges Mahlon Brown, Robert Miller,

and Robert Legakes presiding. Howard M. Miller, Esq., 175 East Reno Avenue, Suite C-6, Las Vegas, Nevada, 89119 was the opposing attorney. His telephone number is (702) 739-0495.

Brennan was charged with resisting arrest and battery upon a police officer. What happened is that Brennan had a traffic altercation with another motorist who turned out to be an off-duty Metro officer. The officer looked up Brennan's license number and the next day went looking for him with several of his cronies, all of whom were on duty, supposedly to serve a traffic warrant. They found Brennan that evening at his place of work, the Tropicana Hotel, and according to witnesses, they attacked and beat Brennan. They claimed that he resisted arrest and attacked them first. The trial commenced in Judge Mahlon Brown's court. When I was cross examining the instigating officer, he admitted that he and his friends had served their traffic warrant on Brennan after 7:30 at night. When the deputy district attorney raised the question of relevance, I pointed out to the court that, by statute, warrants had to be served during daylight hours. The state immediately called for a continuance, which the judge granted. Before we reconvened, the judge told us that he knew one of my witnesses, who was sitting in court. When we reconvened, the deputy DA moved for recusal of Judge Brown, and the judge granted that motion.

The deputy district attorney's motion for recusal was made solely to gain additional time. We all realized that if Brennan prevailed on these charges, that he would have me file a civil suit against the sheriff and Metro for police brutality.

The case was then assigned to Judge (later governor) Robert Miller, who also recused himself, because he had been a deputy DA and had been the Metro advisor and knew the arresting officer and his friends. The case was finally assigned to Judge Legakes, who set a hearing date to determine a date upon which we could recommence the trial on the charges against Brennan. Prior to that hearing, the deputy district attorney told me that Metro had instituted procedures to prevent anything like this from happening again, and that the officers involved would be disciplined. He had authority to

dismiss the charges against Brennan, if Brennan would waive his right to sue Metro.

I took Mr. Brennan aside and reminded him that at our first meeting he had told me that he wanted his name cleared and he wanted the errant officers to be sanctioned. By agreeing to the state's terms, I could guarantee him that we would accomplish this result. He agreed to a dismissal, and he waived any and all civil claims against the officers and Metro.

This case was significant for me, because through hard work and careful preparation, I was able to achieve my client's goals in a short period of time without a succession of expensive trials. It was significant for Clark County, because Metro addressed the problem of out-of-control officers and took steps to prevent them from preying on ordinary citizens.

C. Valley Plastering v. Covington Bros. 93 Nev. 355, 566 P.2d 814 (1977). My client was Valley Plastering, a licensed contractor who had been terminated at the end of phase one of a project, despite the fact that the client had a contract for phase two. Melvin D. Close, Jr., Esq., 3773 Howard Hughes Parkway, 3<sup>rd</sup> Floor South, Las Vegas, Nevada 89109 was opposing counsel. His telephone number is (702) 734-2220. Although I was not the attorney of record, I worked on the pretrial motions and discovery. We prevailed in the lower court and I assisted with the preparation of the answering brief and handled the oral argument in the state supreme court.

This case is significant because it establishes the right and the circumstances under which a business can recover for lost profits in a contract dispute.

D. Young Electric Sign Co. v. Nevada Department of Transportation, 98 Nev. 536, 654 P.2d 1028 (1982). My client, YESCO, had erected an advertising sign for Pop's Oasis Casino in Jean, Nevada. Allen D. Gibson, Esq. was opposing counsel. His present address and telephone number are unknown. NDOT sent YESCO a letter, claiming that the sign violated federal highway beautification regulations. YESCO responded to that letter that the sign was in compliance with those regulations.

Approximately, nine months later, without any further notice, NDOT sent a crew out to the sign on a holiday weekend and destroyed the sign and removed the remnants. YESCO filed suit against NDOT, but lost the case in the trial court. I was retained as the attorney for the appeal. I argued that the actions of NDOT violated the Fifth and Fourteenth Amendments to the Constitution in that the state had destroyed private property without notice, and due process required that the state pay YESCO the fair value of the destroyed sign. The supreme court agreed, and on remand, the lower court, Judge Myron Leavitt presiding, awarded YESCO its damages.

This case is significant because it reinforced the constitutional protections that all of us enjoy in the ownership of property. NDOT had been destroying any advertising signs that it considered to be non-conforming without notice and without paying any compensation to the owners. The representatives of the state were actually surprised that they were expected to provide notice of non-compliance and an opportunity for a hearing before they could remove and destroy the signs.

E. Young Electric Sign Co. v. County of Clark. Mandamus proceeding in state district court, with Judge Robert Legakes presiding. Clark County district attorney was opposing attorney.

My client, YESCO, wanted to build a vehicle service facility in order to repair and maintain its trucks. When it applied to the County of Clark for a building permit, the county agreed to issue the permit, on the condition that YESCO would convey a flood control easement over the back portion of its property to the county. The government cannot refuse to issue a license or permit to a citizen by imposing conditions that are unrelated to the license or permit itself. It is as though you went into DMV for your driver's license, and the state agreed to issue you a license so long as you granted the state a flood control easement through your house. I filed a petition for a writ of mandamus in state district court, and Judge Legakes ruled in our favor and directed the county to issue the building permit.

This case is significant in that the county officials involved saw nothing wrong with their actions. They were

omnipotent and were acting for the betterment of Clark County; who were we to question the flood control requirement? The price of freedom is eternal vigilance.

F. Summa Corp. v. T.W. Richardson, et al, 93 Nev. 228, 564 P.2d 181 (1977); Lummis v. Eighth Judicial District Court, 94 Nev. 114, 576 P.2d 272 (1978); and Summa Corp. v. T. W. Richardson, et al., 95 Nev. 399, 596 P.2d 208 (1979). These cases all involved disputes concerning the Silver Slipper Casino. I along with John Peter Lee, Esq., 830 Las Vegas Blvd. South, Las Vegas, Nevada, 89101, telephone number is (702) 382-4944 and Arthur Crowley, Esq., an attorney from Los Angeles, California represented the former owners of the Silver Slipper. Mr. Crowley is no longer listed in Los Angeles and I am unaware if he is still practicing. Joseph Foley, Esq., 850 East Bonneville, Las Vegas, Nevada, 89101 (now retired) represented Howard Hughes and his corporation, Summa Corporation, and Hughes' executor, William Lummis. His telephone number is (702) 384-2070. My clients had leased the Silver Slipper to Howard Hughes by a lease which contained an option to purchase.

When the time came to exercise the option, Hughes purported to have his corporation exercise the option so that it would own the Slipper. My clients denied that this was a proper exercise inasmuch as the option was personal to the lessee, Howard Hughes. These cases were interesting in that they involved (and resolved) many issues in the area of landlord/tenant and option law in Nevada. Also, I learned much, litigating against the reclusive Mr. Hughes.

G. Campbell v. Lake Terrace, 111 Nev. 1329, 905 P.2d 163 (Nev. Supreme Ct. 1995). I represented Judy Campbell, and Martin R. Boyers, Esq., 302 East Carson Avenue, Suite #601, Las Vegas, Nevada, 89101 represented the corporation, Lake Terrace, which had issued my client a promissory note for \$100,000 and then reneged on the obligation. Mr. Boyers telephone number is (702) 382-4343. The shareholders of Lake Terrace had issued this note to help satisfy her former husband's obligations to her (because he had previously been a shareholder). After he and the corporation severed their ties, Lake Terrace then refused to honor the note. On appeal I was able to persuade the supreme court to award Ms. Campbell the full face amount of the note.



H. In re: Charles D. Stapp of Nevada, Inc., Equitable Mtge. Co. v. Fishman, 641 F.2d 737 (9<sup>th</sup> Cir. 1980). I represented a secured creditor in a Chapter 11, and Leonard A. Wilson, Esq. (now deceased) represented the bankruptcy trustee who was appointed. The issue was what was the effect of an assignment of rents provision in a deed of trust when the debtor defaulted in its payment obligations and whether the creditor had to seek an order of sequestration before being entitled to collect the rents. The issue had never been decided by Nevada state courts.

Although the issue had become moot because of subsequent events, the case was significant because it established the nature of an absolute assignment of rents in bankruptcy proceedings.

I. In re: Shuman v. McDonald, Trustee, 78 B.R. 254 (9<sup>th</sup> Cir. BAP 1987). I represented the debtor, who claimed that his interest in his employer's pension and profit sharing plans was exempt and thus beyond the reach of the bankruptcy trustee. Lenard Schwartzter, Esq., 325 South Maryland Parkway, Suite #8, Las Vegas, Nevada 89101, telephone number (702) 382-2500, represented the trustee. I relied upon BRISA and a state court determination in an earlier case that these plans were exempt under Nevada law. I received telephone calls from attorneys around the nation, because these exemption issues for pension and profit sharing plans were unsettled at that time.

J. Tandy Computer Leasing v. Terina's Pizza, Inc., 105 Nev. 841, 784 P.2d 7 (1989). I was the attorney for Radio Shack (a.k.a. Tandy Computer Leasing), which had leased several computers to a local business, which ultimately defaulted in making payments. Mark Brandenburg, Esq., now retired, represented the defendant. The case involved a forum selection clause, which required the defendant to initiate litigation in Fort Worth, Texas. The Nevada Supreme Court determined that the clause was not enforceable. This case is cited several times a year for various propositions in cases that I hear as a state district court judge.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation

which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The most significant legal activities I have pursued include the following:

a. When I was an attorney, I represented a number of small businesses. During the course of that representation I advised them concerning the law and various legal requirements and counseled them as to means to avoid litigation. Specific significant activities included preparing all legal documents for a state chartered thrift company; this activity involved drafting documentation for loan transactions that complied with state law dealing with security interests and Federal law providing for consumer protection, including Truth in Lending and Regulation Z. Thereafter our firm represented the thrift company in all litigation against debtors in state and bankruptcy court.

I also represented the largest sign company in the state, Young Electric Sign Co., which has built practically all of the neon landmarks for which Las Vegas is famous. Aside from litigation, I apprised YESCO of the applicable laws involving real estate, mechanic's liens and related business matters, including the Uniform Commercial Code.

b. As part of my pro bono activities when I was an active lawyer, I became the legal counsel for Habitat for Humanity Las Vegas. Habitat builds houses with donated materials and volunteer labor and then sells those houses at cost to those (called Habitat partners), who otherwise could never afford a house.

Habitat finances the partners' purchase of those houses with interest free loans, with monthly installments based upon the partners' income rather than upon a schedule. Thus, the typical obligation calls for monthly payments of \$300 to \$400 for a term of 15 to 17 years. The documents must be carefully drawn to comply with state law concerning deeds, promissory notes, and deeds of trust to ensure compliance with those laws and to prevent someone from attempting to reap a windfall by selling their Habitat house at its fair market value (which is in excess of the purchase

price). I reviewed and revised all Habitat documents and counseled the board about legal matters.

My most recent experience as an arbitrator occurred in 1998 when two opposing attorneys wanted to divert their case from the endless delays of the legal system and selected me to serve as the arbitrator. They agreed that my decision would be binding upon both sides, with no possibility for an appeal or other judicial review or intervention.

The dispute involved a joint venture for a housing tract between a developer and a general contractor. Each side presented witnesses to testify to the failures of the opponent and a financial expert to testify as to the tremendous damages incurred by reason of those failures.

I treated the matter as a valuation issue, analogous to a partnership dissolution. After I had rendered my decision each attorney called to congratulate me for reaching a fair decision.

d. The most significant legal activity that arose from my activities as a state district court judge was when I volunteered to accept the consolidation of all Fen Phen cases in southern Nevada (approximately 58 cases). I set a schedule for discovery and depositions, dispositive motions, and then trials of 18 carefully selected representative cases, to be tried six cases at a time. I monitored the progress of the various cases and insisted that all parties adhere to the schedule. In the end, all cases settled, without proceeding to trial. At the conclusion, all of the parties noted that my case management was largely responsible for the timely resolution of these cases.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I anticipate the receipt of \$6,200 from my former law firm, Mahan & Ellis, Chartered. This represents income to the firm that I generated but that was collected after I became a judge.

Mahan & Ellis 401(k) profit sharing plan in process of being terminated.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

As a state court judge I have filed a blanket recusal for all cases involving the members of my former law firm, so that I will hear none of their matters. Should I be confirmed as a Federal Judge, I would follow the same procedure. I have followed and will follow the Code of Judicial Conduct in the resolution of conflicts.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current

calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report attached as the next page.

5. Please complete the attached financial net worth statement in detail.
6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No, other than my own political campaign for state district court judge.

AO-19 (w)  
Rev. 1/2000

# **FINANCIAL DISCLOSURE REPORT** **Nomination Report**

*Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)*

<b>1. Person Reporting</b> (Last name, first, middle initial) Mahan, James C.	<b>2. Court or Organization</b> District of Nevada	<b>3. Date of Report</b> 09/10/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge (nominee)	<b>5. Report Type (check type)</b> <input checked="" type="checkbox"/> Nomination, Date 09/10/2001 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/2000 to 08/31/2001
<b>7. Chambers or Office Address</b> 200 South Third Street Department XII Las Vegas, Nevada 89155	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

## **I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Director	Habitat for Humanity Las Vegas
2	
3	

## **II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 12/31/99	Mahan & Ellis earned but unpaid compensation (No control)
2 12/31/89	Mahan & Ellis Profit Sharing Plan
3	

## **III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 12/31/99	Mahan & Ellis	30,414.00
2 12/31/99	State of Nevada, Administrative Office of the Courts	78,630.00
3 12/31/00	State of Nevada, Administrative Office of the Courts	98,018.00
4 7/20/02	State of Nevada, Administrative Office of the Courts	57,527.56

AO-10 (w)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

*Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)*

<b>1. Person Reporting</b> (Last name, first, middle initial) Mahan, James C.		<b>2. Court or Organization</b> Nevada District Court	<b>3. Date of Report</b> 09/10/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge (nominee)		<b>5. Report Type (check type)</b> X Nomination, Date 09/10/2001 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 08/31/2001
<b>7. Chambers or Office Address</b> 200 South Third Street Department XII Las Vegas, Nevada 89155		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<p><i>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</i></p>			

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Director	Habitat for Humanity Las Vegas
2	
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DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 12/31/99	Mahan & Ellis earned but unpaid compensation (No control)
2 12/31/89	Mahan & Ellis Profit Sharing Plan
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouses)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 12/31/99	Mahan & Ellis	30,414.00
2 12/31/99	State of Nevada, Administrative Office of the Courts	78,630.00
3 12/31/00	State of Nevada, Administrative Office of the Courts	98,018.00
4 7/20/02	State of Nevada, Administrative Office of the Courts	57,527.56

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Mahan, James C.	09/10/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE NONE (No such reportable reimbursements)	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE NONE (No such reportable gifts)	DESCRIPTION	VALUE
1	Exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR NONE (No reportable liabilities)	DESCRIPTION	VALUE CODE*
1	First USA Bank	Revolving credit card	K
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more



<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Mahan, James C.				Date of Report 09/10/2001			
<b>VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>									
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
					(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<b>NONE</b> (No reportable income, assets, or transactions.)									
1 Mahan & Ellis Profit Sharing Plan	D	Interest	M	T	Exempt				
2 -American Balanced Fund					Exempt				
3 -Franklin Income Fund Class I					Exempt				
4 -Income Fund of America					Exempt				
5 -Pilgrim Prime Rate Trust					Exempt				
6 -Cromos IEA Fund XII					Exempt				
7 -Inland Capital					Exempt				
8 -Mandalay Bay Resorts common stock (100 shares)					Exempt				
9 -Mirage Resorts common stock					Exempt				
10 -Inland Monthly Income Fund II					Exempt				
11 -Windsor Park Properties					Exempt				
12 -Delaware Medallion variable annuity					Exempt				
13 -Linsco/Private Ledger Brokerage Account					Exempt				
14 Law office at 510 South 9th Street, Las Vegas, Nv.	E	Rent			Exempt				
15 Mandalay Resorts common stock (600 shares)		None	K	T	Exempt				
16									
17									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Mahan, James C.	09/10/2001

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

*(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Mahan, James C.	09/10/2001

**SECTION HEADING.** *(Indicate part of report.)*

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	12/31/01	Mahan & Ellis (earned but not paid in 1999)	5,200.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Mahan, James C.	09/10/2001

**IX. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature James C. Mahan Date Sept 13, 2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$ 3,000	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-Mandalay Bay 600 shares @ \$20 per	\$12,000	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	\$30,000
Due from relatives and friends		Unpaid income tax	None
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-Wells Fargo Bank (1st)	\$34,000
		Nevada State Bank (2nd)	\$17,000
Real estate owned- Residence in Las Vegas, Nevada	\$150,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property 1995 Chevrolet Van	\$ 10,000		
Cash value-life insurance			
Other assets itemize:			
Mahan & Ellis 401(k) Profit Sharing Plan in process of being terminated	\$200,000		
		Total liabilities	\$ 81,000
		Net Worth	\$294,000
Total Assets	\$375,000	Total liabilities and net worth	\$375,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	None	Are any assets pledged? (Add schedule)	No

On leases or contracts	None	Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In order to fulfill my pro bono obligation under Canon 2, I volunteered in 1995 to serve on the community services committee for the Clark County Bar Association. That committee oversees and coordinates the organized bar's outreach efforts to the community. We provided lawyers for public events and speaking occasions, including organizing Law Day activities in the schools.

I served as the subcommittee chairman for the Law Day mock trials in area high schools, when the bar association presented a mock trial with lawyers (or judges) serving as the judge, prosecutor and defense attorney. Teachers assigned their most apt students to be the witnesses, and the remaining students in the classes served as the members of the jury. With the help of the other members of the bar we were able to produce the most successful Law Day program in several years. As a committee member I spent 2-3 hours per month on its activities. As subcommittee chairman, while organizing the Law Day mock trials I spent 10 hours per month, culminating in approximately 30 hours in the month that we actually conducted the trials.

During this same time, I became the counsel for the Las Vegas chapter of Habitat for Humanity. Habitat builds houses for people who are truly indigent and could never otherwise own their own home. Each house is built with donated materials and volunteer labor, including the "sweat equity" of the prospective homeowner.

As counsel for Habitat I was responsible for reviewing all

legal documents concerning Habitat for Humanity Las Vegas (HFHLV), including all corporate papers, tax and accounting records, and acquisition and conveyancing records. I reviewed and revised all of the Habitat real property instruments by which HFHLV acquires or transfers real property. Many of the lots that Habitat acquires are bought with government grants, which necessitates negotiation with the funding governmental entity and review of the documentation presented by that entity.

Each Habitat house has approximately \$40,000 of equity at the time that Habitat deeds the house to the homeowner, because Habitat sells the house at cost and the land is frequently either donated or purchased with grant money. Thus, the conveyancing documents must be carefully crafted to prevent a homeowner from succumbing to the temptation to sell the house immediately and reaping the profit.

Coincidentally, while I was on the bar subcommittee and also the counsel for HFHLV, the Clark County Bar Association decided to build a Habitat house as its community services project for the year. That house was built by lawyers with donated materials arranged by lawyers in conjunction with HFHLV and is the only such house built in Las Vegas by any professional association.

During the time that I was HFHLV counsel, I averaged 20 hours per month on Habitat business. When I became a state district court judge I resigned as counsel but have remained as a board member of HFHLV.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No, I have never belonged to any such organization that

discriminates.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No, there is no selection commission.

I was first approached by local attorneys commencing in January 2001, telling me that they had heard others discussing me as a candidate for a vacancy on the local Federal District Court bench. I was rated the No. 1 judge by the members of the Clark County Bar Association in the biennial judicial ratings poll conducted jointly in 2000 by the bar and The Las Vegas Review Journal (95% retention rating).

After discussing this matter with my wife I began responding that I would be interested in a Federal court appointment and would be honored to be considered for such a position. In mid-February I received a telephone call from a staff person for Senator John Ensign to verify my interest and to set up an interview with his chief of staff, Scott Bensing, the following week.

I brought my biography and letters of recommendation from the governor, the sheriff and local attorneys to the interview. Mr. Bensing reviewed my materials and then asked me questions about my viewpoint about what a judge should be and do.

Subsequently Mr. Bensing telephoned and arranged for an interview with the senator and himself. On that occasion Senator Ensign asked about my judicial philosophy and my role models on the federal bench.

My next contact was from a White House staffer, who wanted to set up a meeting with a week with Judge Al Gonzales, formerly of the Texas Supreme Court and currently counsel to the President. He was concerned with questions about my view of the role of the judiciary and also how I decide cases, the applicability of statutes and precedential case law. Judge



Gonzales also explored my background and personal life for actions that would reflect upon my ability to function as a Federal District Court judge.

Following this interview I completed voluminous forms and underwent a background investigation by the FBI. As a part of this process, I was interviewed by FBI personnel. On September 10, 2001, the president nominated me to be a district judge for the District of Nevada.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No, and I would refuse to answer any such inquiry as calling for a violation of the ethical canons that prohibit a judge from committing to a particular decision on cases that may come before the court.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad,

affirmative duties upon governments and society;

- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Courts must decide the cases that come before them based upon the parties and the evidence that the litigants produce. The judge is aware that his or her decision may have wider application than the immediate parties, but should avoid deciding cases based upon that effect rather than resolving the dispute that is being presented.

Judges should recognize that the courts are one of three co-equal branches of government. Sometimes problems can be better handled or resolved through action by either the executive or legislative branches.

The courts are the forum where individual citizens can receive redress for their grievances and be sure that their matters will receive individual attention from a member of the government. The legislature is better suited to conduct hearings and deal with policy decisions of broad application.

Courts can monitor the effect of those legislative decisions upon individual members of society and ensure that the constitutional rights of litigants are protected.

Senator DURBIN. Thank you very much.  
Mr. Martinez?

**STATEMENT OF PHILIP R. MARTINEZ, NOMINEE TO BE DISTRICT COURT JUDGE FOR THE WESTERN DISTRICT OF TEXAS**

Judge MARTINEZ. Mr. Chairman, good morning. Thank you for the opportunity to appear before the Committee.

I am pleased to have with me from El Paso, Texas, my parents, Mr. and Mrs. Phil Martinez, Senior, who are seated to my left-hand side behind me, and I am also pleased to have with me today my wife, Mayela Martinez, and my daughters, Jaclyn and Lauren Martinez, and they are seated over to the far right-hand side. Thank you, sir.

[The biographical information of Judge Martinez follows.]

*final*

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Philip Ray Martinez  
Other Names Used: Phil Martinez, Phil Martinez, Jr.  
Ray Martinez
2. Address: List current place of residence and office address(es).  
Residence: El Paso, TX  
Office: 327<sup>th</sup> Judicial District Court  
500 E. San Antonio Ave., Room 606  
El Paso, TX 79901
3. Date and place of birth.  
Date: July 13, 1957  
Place: El Paso, TX
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Status: Married  
Name: Mayela del Carmen (Ruiz) Martinez  
Occupation: Teacher  
Employer: El Paso Independent School District  
Johnson Elementary School  
El Paso, TX
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
Pan American University  
Edinburg, TX 78539  
September 1975-December 1975  
University of Texas at El Paso  
El Paso, TX 79968  
January 1976-May 1979  
B.A., Highest Honors (May 12, 1979)  
Harvard Law School  
Cambridge, MA 02138  
September 5, 1979-June 1, 1982  
J.D. (June 10, 1982)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment Record

Summer 1980	Law Clerk Kemp, Smith, Duncan, & Hammond 221 N. Kansas, Suite 1900 El Paso, TX 79901 (915) 533-4424 Contact: Jack Chapman, Executive Director
Summer 1981	Law Clerk Evans, Kitchel & Jenckes 363 N. First Ave. Phoenix, AZ Contact: Hon. F. Pendleton Gaines III (602) 506-3940
Summer 1981	Law Clerk Kemp, Smith, Duncan & Hammond El Paso, TX
August 1982- December 1990	Associate/Shareholder Kemp, Smith, Duncan & Hammond El Paso, TX
January 1991- October 1991	Judge, County Court at Law #1 El Paso County 500 E. San Antonio El Paso, TX 79901
October 1991- present	Judge, 327 <sup>th</sup> Judicial District Court State of Texas/County of El Paso 500 E. San Antonio, Room 606 El Paso, TX 79901

Positions with Organizations (Officer/Director)

Director	Texas Center for the Judiciary, Inc. (99-2001)
Director	El Paso Holocaust Museum & Study Center (99-present)

Officer	Juvenile Law Section, State Bar of Texas (2000-present)
Officer	El Paso County Juvenile Board (1991-present)
Director	Boy Scouts of America Yucca Council (97-98)
Officer	Harvard Schools & Scholarship Committee (91; 98-present)
Director	Hispanic Leadership Institute (92-95)
Director	UTEP Alumni Association (95-98)
Director	El Paso Mexican-American Bar Association (98-99)
Director	Texas Young Lawyer's Association (92-93)
Director	UTEP Miner Foundation (92-93)
Director	El Paso Bar Association (89-92)
Officer	El Paso Bar Association (93)
Director	El Paso Service and Education Labor Force (90-92)
Director	Rio Grande Council of Governments Dispute Resolution Center (88)
Director	National Conference of Christians & Jews (87-89; 90-92)
Director	El Paso Cancer Treatment Center (87-92)
Officer	Ascarate Junior Golf Tournament (83-89)
Officer	El Paso Legal Assistance Society (86-87)
Director	(85-87; 90-92)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Scholarships: Burges Community Council Scholarship  
 Pan American University Golf Scholarship  
 Ascarate Golf Course Association Scholarship  
 Pan American Golf Association Scholarship  
 UTEP Lucille T. Stevens Scholarship  
 National Hispanic Scholarship  
 Harvard Law School Scholarship

Honors/Awards: Burges High School Outstanding Ex(10/2000)  
 Law and Order Award,  
 Military Order of the World Wars(1995)  
 Gold Nugget Award,  
 College of Liberal Arts, UTEP(1995)  
 Outstanding Young Lawyer,  
 El Paso Young Lawyers' Asso.(1991-92)  
 Outstanding Achievement Award,  
 El Paso Young Lawyers' Asso.(1990)  
 Dr. Joseph Malchus Ray Award,  
 UTEP Dept. of Political Science(1980)  
 Admitted to Phi Kappa Phi Honor Society(1979)  
 Admitted to Alpha Chi Honor Society(1976)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Bar Associations: American Bar Association(83-present)  
 Hispanic National Bar Association(93-present)  
 State Bar of Texas(82-present)  
 Judicial Section(91-present)  
 Chair, Indigent Defense Representation Committee(2000-present)  
 Juvenile Law Section(92-present)  
 Council Member(99-present)  
 Secretary(2000)  
 Chair-Elect(2001)  
 Litigation Section(83-present)

Labor & Employment Law Section(98-present)  
 Consumer Law Section(84-90)  
 Antitrust Section(83-84)  
 Judiciary Relations Committee(2001)  
 Legal Services to the Poor in Civil Matters Committee(88-91)  
 Liaison with Law Schools Committee(84-86)  
 Texas Young Lawyers' Association(83-93)  
 Director(92-93)  
 El Paso Bar Association(82-present)  
 Director(89-92)  
 Treasurer(93)  
 Local Rules/Judicial Liaison Committee(94-95;98-01)  
 Chairman(98-99)  
 Co-Chair(00-01)  
 El Paso Mexican-American Bar Association(83-present)  
 Director(98-99)  
 El Paso Young Lawyers' Association(83-93)

#### Professional

Memberships: American Law Institute(94-present)  
 National Council of Family and Juvenile Court Judges(92-present)  
 Texas Center for the Judiciary(91-present)  
 Director(99-present)  
 Nominating Committee(2001)  
 American Judicature Society(2000-present)  
 Texas Bar Foundation(89-present)  
 Life Fellow(98)  
 College of the State Bar of Texas(98-present)  
 El Paso Council of Judges(91-present)  
 Local Administrative Judge(94-97)  
 Chairman, Red Mass Committee(96-present)  
 El Paso County Juvenile Board (91-present)  
 Chairman(91-present)

#### Judicial

Appointments: Rule 11 Judge, Sixth Administrative Region  
 Ford, Firestone, Bridgestone Cases 2001



Metropolitan Administrative Judges Group  
El Paso Delegate, 2000

Texas Juvenile Probation Commission  
Chapter 55 Workgroup, 1998

Office of Court Administration Strategic  
Planning Group  
Chairman, 97-99

Texas Judicial Council, Juvenile Justice  
Subcommittee Advisory Member, 98-99

Texas Commission for Judicial Efficiency  
Funding Parity Task Force, 95-97

El Paso Region Gender Bias  
Committee, 1995

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None of the organizations to which I belong are active in lobbying before public bodies.

Other organizations to which I belong are the El Paso Holocaust Museum & Study Center (Director, 1999-present), the Harvard Schools & Scholarships Committee (1988-present, Chairman 1991, 1998-present), Harvard Alumni Association (Club President - El Paso Chapter, 2000-01), the American Judicature Society, the El Paso County Democratic Party, Tejano Democrats, the Coronado High School Orchestra Association, and Queen of Peace Catholic Parish (Catechist, Confirmation III, 99-present).

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State Bar of Texas, 1982-present;

United States District Court  
Western District of Texas, 3/30/84-present;

United States Court of Appeals, Fifth Circuit  
1982-present

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I am not aware of any time during which my membership in any of the courts listed above lapsed.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

The following list is of articles which I have either authored or co-authored:

1. Miscellaneous Juvenile Code Provisions  
13<sup>th</sup> Annual Juvenile Law Conference  
State Bar of Texas, Juvenile Law Section  
February 2000
2. Miscellaneous Juvenile Code Provisions  
1999 Juvenile Judges Conference  
Texas Juvenile Probation Commission  
November 1999
3. Discovery in Juvenile Cases - Revisited  
12<sup>th</sup> Annual Juvenile Law Conference  
State Bar of Texas, Juvenile Law Section  
February 1999
4. Discovery in Juvenile Law Cases  
11<sup>th</sup> Annual Juvenile Law Conference  
State Bar of Texas, Juvenile Law Section  
February 1998
5. New Rules of Procedure and Other Non-Substantive Issues  
Affecting Civil Litigation  
Civil Trial Seminar  
El Paso Bar Association  
December 1997
6. Discovery in Juvenile Cases  
2<sup>nd</sup> Annual Juvenile Judges Conference  
Texas Juvenile Probation Commission  
November 1997
7. The New Juvenile Justice Code  
3<sup>rd</sup> Annual El Paso Criminal Law Seminar  
El Paso County Public Defender  
November 1995

8. Legal Issues in Juvenile Justice  
2<sup>nd</sup> Annual El Paso Criminal Law Seminar  
El Paso County Public Defender  
October 1994
9. Issues in Juvenile Justice  
1992 Mexican American Bar Association of Texas  
Conference  
September 1992
10. Freedom of Expression: Constitutional History  
in Free To Be ...200 Years of the Bill of Rights  
Texas Young Lawyers Association  
1991
11. Rule 76a: Sealing of the Court Record  
14<sup>th</sup> Annual Advanced Civil Trial Course  
State Bar of Texas  
September 1991
12. Defending a DTPA Claim  
2<sup>nd</sup> Annual DTPA Seminar  
University of Texas School of Law  
1990
13. Defending a DTPA Claim  
Texas Tech University DTPA Seminar  
1990
14. Defending a DTPA Claim  
1<sup>st</sup> Annual DTPA Seminar  
University of Texas School of Law  
1989

All presentations on legal matters have been in conjunction with the CLE presentations I have made over my legal and judicial career. I am not in possession of any recordings of any such presentations.

Additionally, I have had occasion to make several presentations to different civic groups on a variety of subjects primarily relating to juvenile justice issues and self-motivation issues. Copies of available written speeches are attached hereto. Most of the presentations which I give are given extemporaneously, and therefore, no written text is available. I speak frequently to students throughout the El Paso area and have had occasion to visit many campuses in the El Paso community.

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I have also had occasion to make presentations at CLE courses which did not require that I prepare a paper or article. Some presentations have been made as a member of a panel and some have been made by myself. I am not in possession of any such speeches since it is not my practice to read from prepared texts. A list of the more significant presentations made (without articles having been prepared) is set forth below:

PRESENTATIONS:  
(LEGAL)

Speaker  
"The Adjudication Hearing" and  
"Modification of Disposition"  
Juvenile Law Specialization Review Course  
Texas Juvenile Probation Commission/  
Juvenile Law Section, State Bar of Texas  
August 2001

Speaker  
"Trial Court Performance Standards"  
Mexican-American Bar Asso. of El Paso  
January 2001

Speaker  
23<sup>rd</sup> Annual Advanced Civil Trial Course  
"Judicial Perspectives on Trial Practice"  
State Bar of Texas  
September 2000 (Houston, San Antonio)  
November 2000 (Dallas)

Panelist  
"Professionalism & the Courts"  
2000 Judicial Section Annual Conference  
Facilitated by Michael Josephson  
September 2000

Panel Member  
"Juvenile Boot Camps"  
Texas Juvenile Probation Commission  
1<sup>st</sup> Annual Juvenile Judges Conference  
August 1996

Speaker  
 "Current Issues Confronting Trial Lawyers"  
 El Paso Lawyers Alliance  
 July 1994

Faculty Panelist  
 "Texas Discovery 1994"  
 The Rutter Group of Texas  
 January 1994

Faculty Panelist  
 "Texas Discovery 1993"  
 The Rutter Group of Texas  
 January 1993

Speaker  
 "New Developments in Juvenile Justice"  
 Texas Association of County Judges and  
 Commissioners-October 1992

Speaker  
 "The Sentencing Dilemma"  
 Northwest Region Texas Corrections  
 Association Conference  
 1992

#### CIVIC PRESENTATIONS:

Keynote Speaker  
 "Setting the Standard by Obeying the Law"  
 101<sup>st</sup> Police Academy Class  
 El Paso Police Department  
 September 2001

Keynote Speaker  
 "Setting the Standard by Obeying the Law"  
 Basic Peace Officer Course Graduation  
 Ceremony  
 El Paso County Sheriff's Department  
 August 2001

"In Defense of Juvenile Justice"  
 Knights of Columbus Clergy Appreciation  
 Dinner  
 February 1999

Keynote Speaker  
 "Called to Service"  
 Annual Awards Ceremony & Induction of  
 New Officers  
 West Texas Community Supervision and  
 Corrections Department  
 February 1997

Speaker  
 "Introduction to the Court System"  
 Leadership El Paso: "Politics & Justice"  
 September 1997

Keynote Speaker  
 "Service with Honor"  
 92<sup>nd</sup> Police Academy Class  
 El Paso Police Department  
 October 1996

Keynote Speaker  
 "Endless Possibilities"  
 El Paso Herald-Post Academic Achievers  
 Banquet  
 April 1995

Keynote Speaker  
 "On Human Investments"  
 El Paso Times Leadership Academy  
 May 1994

Commencement Speaker  
 "New Beginnings"  
 David L. Carrasco Job Corp Center  
 November 1993

Speaker  
 "Border Youth Issues and Statistics"  
 An Agenda for At-Risk Youth in the 90's  
 1993

Commencement Speaker  
 "Today you Begin"  
 El Paso Community College  
 May 1993

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Special Address  
 "Today's Youth: A Source of Pride or a  
 Group to Fear?"  
 El Paso Central Labor Union Council  
 Annual Labor Day Breakfast  
 September 1991

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last complete physical examination was done in July 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1. Judge, County Court at Law No.1  
 Elected

Term: January 1991-December 1994

Jurisdiction: El Paso County (w/o limitation to amount in controversy and concurrent with District Court but for causes of action statutorily reserved to District Court)

Presided over misdemeanor, probate, family and civil cases.

I had two opponents in the party primary which I won with 65% of the vote, and was unopposed in the general election. I resigned the position in October 1991 to accept the appointment to the District Court.

2. Judge, 327<sup>th</sup> Judicial District Court  
 Appointed & Subsequently Elected

Term: October 1991-December 1992

January 1993-December 1994

January 1995-December 1998

January 1999-December 2002

Jurisdiction: El Paso County and duly designated as the Juvenile Court for El Paso County

Presided over felony, civil, family and juvenile cases.

Judge Enrique H. Pena resigned from the 327<sup>th</sup> District Court in September 1991, creating a vacancy in office. I sought and received the appointment by the Governor

until the next general election, at which time I was required to seek election for the unexpired term.

I have run for office without opposition since my initial contested primary.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Opinions

I have written only two opinions during my judicial career, both of which relate to juvenile cases. Copies are attached hereto for your review. The opinions were not officially reported.

Ten of the most significant cases over which I have presided are noted below:

1. In re: L.A.C.  
Cause No. 9901203  
Charge: Murder, Aggravated Assault  
Attorney for State: Dave Robert Contreras, Lisa Hayes  
Attorney for Juvenile: Eduardo Solis, Robert Harris  
Verdict: Delinquent of Murder and Aggravated Assault  
Disposition: 30 years (murder); 5 years (aggravated assault)  
Case has been appealed and the appeal remains pending.
2. Chavez v. Klein  
Cause No. 97-1247  
Cause of Action: Medical Negligence  
Attorney for Plaintiff: Steve Nickey, Norman Weiss  
Attorney for Defendant: Larry Hicks, Cynthia Llamas  
Verdict: Defense Verdict



3. In re: M.A.F.  
Cause No. 95,00024  
Charge: Capital Murder  
Attorney for State: Ruben Duarte, Kathryn Janda  
Attorney for Juvenile: Charles Roberts, Angelina Lugo  
Verdict: Hung Jury, Mistrial Declared  
This was the third trial of the case and the charges were subsequently dropped by the prosecutor.
4. Battleson v. Allstate Texas Lloyds  
Cause No. 97-3249  
Cause of Action: Breach of contract, bad faith, intentional infliction of emotional distress, DTPA violations, Insurance Code violations, malicious prosecution, abuse of process, false imprisonment, malice (punitive damages)  
Attorney for Plaintiff: Gary Richardson, Keith Ward, John Wenke  
Attorney for Defendant: David Pierce, Laura Ekery  
Directed verdict for defendant on false imprisonment, abuse of process, malicious prosecution, intentional infliction of emotional distress, DTPA violations relating to misrepresentation and unconscionable conduct allegations  
Verdict: Plaintiff awarded damages for bad faith claim  
Case settled after verdict.
5. Swall v. Lyon  
Cause No. 97-177  
Cause of action: Dental negligence  
Attorney for Plaintiff: Michael Cohen  
Attorney for Defendant: Larry Hicks, Hadley Huchton  
Verdict: Defense verdict
6. Cruz v. Paso del Norte Health Foundation  
Cause No. 96-3092  
Cause of Action: Medical negligence  
Attorney for Plaintiff: Mark Mueller, Bonnie Bratton, Carlos Cardenas  
Attorney for Defense: Frank Feuille IV, Bob Dunn, Kevin Dubose, Richard Hogan  
Guardian-ad-Litem: Ben Langford  
Verdict: Defense verdict  
Court denied Motion for New Trial and Case Affirmed on Appeal, 44 S.W.3d 622 (Tex.App. 2001)

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7. Farias v. Thomson Consumer Electronics, Inc. & DSI Staff Connexions-Southwest, Inc.  
Cause No. 96-3036  
Cause of Action: Defamation  
Attorney for Plaintiff: Dennis Richard  
Attorney for Defendants: Michael McQueen, Michael Crowley  
Verdict: Damages awarded in favor of Plaintiff and against both defendants; Punitive damages awarded against both defendants  
Thomson Consumer settled with Plaintiff following verdict; DSI appeal was affirmed by Court of Appeals in an unpublished opinion, No. 08-98-00367-CV; the parties settled the case after the Texas Supreme Court granted review, and the case was dismissed.
8. Lujan v. American Fence Co.  
Cause No. 96-1674  
Cause of Action: Negligence, Gross negligence  
Attorney for Plaintiff: Noel Gage, Tim Herrington, Darryl Carter  
Attorney for Defendants: Milton Colia, Paul Bracken  
Verdict: Case settled after closing arguments (\$6.5 million)
9. Keffer v. Columbia Health Care  
Cause No. 94-4729  
Cause of Action: Sexual Harassment/Retaliation  
Attorney for Plaintiff: Dennis Richard  
Attorney for Defendant: Joe Hood  
Verdict: Damages awarded to Plaintiff  
Case was settled after verdict.
10. Gouch v. Blackham  
Cause No. 36980  
Cause of Action: Will contest  
Attorney for Plaintiff: Joel Fry  
Attorney for Defendant: William Thurmond, J.L. Jay  
Verdict: Plaintiff's verdict  
Case settled after verdict.

(2) Appellate Court Opinions

The following list of cases are those over which I presided and wherein my decisions were reversed, reformed, modified or affirmed with criticism of the trial court:

1. Chavez v. Providence Memorial Hospital, Dr. Murtaza, & Dr. Dillow  
Cause No. 98-1929  
Appeal to 8<sup>th</sup> Circuit Court of Appeals

Appellate Cause No. 08-99-00276-CV  
 Opinion Date: June 7, 2001 (Not Published)  
 Summary: I dismissed the case brought by plaintiff in light of plaintiff's failure to comply with Tex. Rev. Civ. Stat. Ann. art. 4590i, §13.01(1) (Vernon Supp. 2001), which provision sets forth the requirements for an "expert" report. The Court of Appeals concluded there was no error on my part in dismissing plaintiff's claim, but did reverse the part of the judgment where I denied attorney's fees and costs to the defendant hospital. The case has been remanded to the trial court.

2. Mt. Chaparral, L.C., Kirwin, & Hanson v. O'Connor  
 Cause No. 96-4563  
 Appeal to the 8<sup>th</sup> Court of Appeals  
 Appellate Cause No.: 08-98-00293-CV  
 Opinion Date: October 5, 2000 (Not Published)

Summary: This appeal was from a jury verdict in favor of the plaintiff in a DTPA action. The Court of Appeals found that the evidence was factually insufficient to support the damages (both direct and consequential) and the jury's finding that the defendant's had acted "knowingly". The Court did find that the evidence was legally sufficient as to all three issues, but factually insufficient. The case was remanded for a new trial.

3. Bio-Medical Applications of Texas, Inc. v. Dr. and Mrs. Alvarez and Total Renal Care, Inc.  
 Cause No. 97-226  
 Appeal to the 8<sup>th</sup> Court of Appeals  
 Appellate Cause No. 08-99-00017-CV  
 Opinion (on Rehearing) Date: September 21, 2000

Summary: In this action, I granted the defendants' no-evidence summary judgment motion. Plaintiff appealed attacking the granting of the summary judgment and the striking of summary judgment evidence filed by the plaintiff. The Court of Appeals found no error in connection with the striking of the summary judgment evidence presented by plaintiff. The appellate court also affirmed my decision to grant the summary judgment in favor of the defendants relating to all causes of action with the exception of the defamation and slander per se claims. The case was remanded to the trial court only as to the remaining causes of action. The case remains pending. The original judgment of the appellate court issued on June 15, 2000 was withdrawn.

4. In the Matter of J.S.S.  
Cause No. 9900275  
Appeal to the 8<sup>th</sup> Court of Appeals  
Appellate Cause No. 08-99-00121-CV  
Opinion Date: June 8, 2000  
Citation: 20 S.W.3d 837 (Tex. App.-El Paso, 2000)

Summary: The juvenile was adjudicated of delinquent conduct (possession of more than 50 but less than 200 pounds of marijuana) and committed to the Texas Youth Commission. The appellate court found that I erred since I considered the pre-disposition report prepared by the Juvenile Probation Department since the report was taken in violation of the juvenile's Fifth Amendment right to remain silent. The appellate court found that the juvenile's Fifth Amendment rights extend through the conclusion of the disposition hearing and that the use of incriminating evidence gathered by the probation officer and incorporated into the written report violated the juvenile's privilege against self-incrimination. The matter was remanded to the trial court for a new disposition hearing.

5. Roadrunner Distribution Services v. Flores  
Cause No. 97-983  
Appeal to the 8<sup>th</sup> Court of Appeals  
Appellate Cause No 08-98-00222-CV  
Opinion Date: July 29, 1999 (Not Published)

Summary: This appeal is from a default judgment wherein defendant complained of defective service of process. The appellate court found the service to be invalid, the plaintiff not having strictly complied, thereby depriving the trial court of in personam jurisdiction rendering the default judgment void. The case was remanded for trial. The case remains pending.

6. Granillo v. El Paso Baking Co., Inc.  
Cause NO. 97-2046  
Appeal to the 8<sup>th</sup> Court of Appeals  
Appellate Cause No. 08-98-00283-CV  
Opinion Date: July 1, 1999

Summary: In this breach of contract action, plaintiff appealed my decision to grant a motion JNOV on lost profits and my having granted a directed verdict on his claim for attorney's fees. A jury had awarded plaintiff \$278,492 in lost profits. On the issue of lost profits, the appellate court

concluded that there was some evidence of lost profits and that therefore the granting of the motion JNOV was not proper. However, the appellate court also sustained the defendant's cross-point concluding that although there was some evidence of lost profits, that the evidence offered by plaintiff was factually insufficient to support the jury's award. The appellate court did affirm my ruling on the issue of the attorney's fees claim. The issue of both liability and damages was remanded to my court. The case eventually settled out of court.

7. Wal-Mart v. Gonzalez  
Cause No. 96-448  
Appeal to the 8<sup>th</sup> Court of Appeals  
Appellate Cause No. 08-98-00209-CV  
Opinion Date: February 18, 1999 (Not Published)

Summary: This premises liability case in which plaintiff was awarded \$7,000 in damages following a jury trial was reversed since the appellate court found there was no evidence that Wal-Mart had constructive notice of the actual existence of the spill. The judgment was reversed and rendered that plaintiff take nothing.

8. General Motors Acceptance Corporation/Crenshaw, Dupree & Milam v. Crenshaw, Dupree & Milam/ General Motors Acceptance Corporation  
Cause No. 93-9075 (243<sup>rd</sup> District Court)  
Appealed to the 8<sup>th</sup> Court of Appeals  
Appellate Cause No. 08-96-00411-CV  
Opinion Date: September 17, 1998  
Citation: 986 S.W.2d 632

Summary: This appeal is from the granting of a summary judgment wherein the appellate court found that there existed a fact question which should have been submitted to the trier of fact and which precluded dismissal of the case. The cause was remanded to the trial court and was settled out of court.

9. De la Cruz v. American Guarantee & Liability Insurance Co.  
Cause No. 91-7331  
Appealed to the 8<sup>th</sup> Court of Appeals

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Appellate Cause No. 08-97-00046  
 Opinion Date: June 18, 1998 (Not Published)

Summary: This is an appeal from the granting of a summary judgment in favor of the defendant. The plaintiff's worker's compensation claim was settled and severed, and the bad faith claim was the only issue before the trial court. The appellate court concluded that one report submitted in support of the summary judgment motion had not been properly authenticated and therefore should not have been considered by the trial court. The court also concluded that the trial court was correct in granting summary judgment relating to the defendant's suspension of total temporary disability payments, but in error with respect to the denial of examination and treatment of plaintiff by a particular doctor. A new trial was ordered only as the latter issue.

On remand, the trial court again granted summary judgment in favor of the defendant (a no-evidence summary judgment) which summary judgment and dismissal was affirmed by the appellate court in De la Cruz v. American Guarantee and Liability Insurance Co. (Cruz II), Appellate Cause No. 08-99-00198-CV, decided August 10, 2000, UNPUBLISHED.

10. In re Gardner Zemke Co.  
 Cause No. 97-1339  
 Appeal to the 8<sup>th</sup> Court of Appeals  
 Appellate Cause No. 08-97-00471-CV  
 Opinion Date: May 21, 1998  
 Citation: 978 S.W.2d 624 (Tex. App.-El Paso, 1998)

Summary: In this case, the defendant contractor sought mandamus relief to compel arbitration. The trial court denied the motion to compel arbitration since certain conditions precedent were not met. The appellate court determined that the trial court was required to compel arbitration once it determined the existence of an agreement to arbitrate and that the dispute in question fell within the scope of that agreement. The writ of mandamus was conditionally granted pending compliance with the appellate court's ruling. Following this decision, the motion to compel arbitration was granted and the case proceeded to arbitration.

11. Rosales v. Edd Powell, Inc. d/b/a Lakeside Big S  
 Cause No. 94-5964  
 Appeal to the 8<sup>th</sup> Court of Appeals

Appellate Cause No. 08-97-00147-CV  
 Opinion Date: April 30, 1998 (Not Published)

Summary: This is an appeal from the granting of a summary judgment in favor of the defendant. Plaintiff instituted the suit against the wrong corporate defendant initially and thereafter sued the correct corporate defendant, however, said action was filed more than two years after the date on which the cause of action accrued. The appellate court concluded that the relationship between the two corporate defendants (Powell Supermarkets, Inc. and Edd Powell, Inc. was sufficient to create a genuine issue of material fact which precluded summary judgment. The case was remanded for trial.

12. In the Matter of M.A.F.  
 Cause No. 95,0024  
 Appealed to the 8<sup>th</sup> Court of Appeals  
 Appellate Cause No. 08-95-00309-CV  
 Affirmed on February 27, 1997 (UNPUBLISHED)  
 Appealed to the Texas Supreme Court  
 Supreme Court Cause No. 97-07480  
 Citation: 966 S.W.2d 448 (Tex. 1998)

Summary: Juvenile was adjudicated of delinquent conduct for the offense of capital murder and assessed a sentence of twenty years under the Determinate Sentencing Act of the Texas Family Code. Before the return of the verdict, the jury had indicated that they were deadlocked with five jurors in favor of a delinquent finding and seven jurors leaning for a not-delinquent finding. Thereafter, one of the jurors discovered a marijuana cigarette in the lining of a jacket which had been admitted into evidence, which cigarette was shown to the other jurors. Defense counsel elected not to move for mistrial at that time nor did he request that any instruction be given the jurors. The following morning, deliberations continued and shortly thereafter the jury unanimously concluded that the juvenile was delinquent. After the jury verdict, the attorney for the juvenile moved for mistrial, which motion was denied given counsel's failure to object timely. The court of appeals affirmed the judgment of the trial court, but the Texas Supreme Court reversed and remanded the case for a new trial having concluded that the jury received additional evidence after retiring to deliberate in violation of an appellate rule of procedure. The case was re-tried and ended in a

hung jury. After the third trial and a deadlocked jury, the prosecutors decided not to prosecute a fourth time and the charges against the juvenile were dismissed and the juvenile was released from custody.

13. Texas Department of Health v. Rafael Ruiz  
Cause No. 90-8808  
Appealed to the 8<sup>th</sup> Court of Appeals  
Appellate Cause No. 08-96-0025  
Opinion Date: May 8, 1997  
Citation: 960 S.W.2d 714

Summary: This appeal was from a judgment which awarded plaintiff \$250,000 following a jury trial and ordering reinstatement of the plaintiff. The action was one alleging worker's compensation discrimination (retaliation) by the employer. The appellate court concluded that the Texas Department of Health was an agency of the State, was entitled to sovereign immunity from suit and liability, and that the Texas legislature did not waive the state's sovereign immunity by enacting Article §307c (amended and now Section 451.001-.003 of the Texas Labor Code). The judgment of the trial court was reversed and rendered. I believe that this case originated in County Court at Law No. 7, and that the Motion for Summary judgment alleging sovereign immunity as a defense to the lawsuit was denied by Judge Peter Peca. I was asked and agreed to try the case for Judge Peca. The issue of sovereign immunity having been reviewed by the referring court, I was reluctant to second-guess him and granted judgment accordingly.

14. R. Conrad Moore & Associates v. Lerma and Lerma  
Cause No. 92-12619 (243<sup>rd</sup> District Court)  
Appeal to the 8<sup>th</sup> Court of Appeals  
Appellate Cause No. 08-96-00152-CV  
Opinion Date: March 13, 1997  
Citation: 946 S.W.2d 90

Summary: This appeal is from a jury verdict in favor of the plaintiff in connection with a contract between the parties. The appellate court found that the plaintiffs had waived their right to have the earnest money refunded (the jury's award of damages) and rendered judgment that plaintiffs take nothing.

15. Dechon v. Dechon



Cause No. 71-2816  
 Appeal to the 8<sup>th</sup> Court of Appeals  
 Appellate Cause No. 08-94-00125-CV  
 Opinion Date: October 26, 1995  
 Citation: 899 S.W.2d 300

Summary: This appeal arises from an enforcement and clarification suit from a property settlement agreement entered incident to a divorce granted in 1971. The judgment of the trial court was affirmed with a modification in the amount of the award, the appellate court finding that a two year statute of limitation governed in the case.

16. Manuel Lopez v. State of Texas  
 Cause No. 67982-327  
 Appeal to the 8<sup>th</sup> Court of Appeals  
 Appellate Cause No. 08-93-00474-CR  
 Opinion Date: April 6, 1995  
 Citation:

Summary: This appeal is from a conviction for the offense of theft over \$20,000 with punishment for a period of eight years. The appellate court reformed the judgment to reflect conviction for a third-degree felony theft (the state having failed to establish ownership of the misappropriated funds in excess of \$20,000, but proving ownership for funds totaling in excess of \$8,000), and remanded the case for a new punishment hearing.

- (3) Citations for Significant Opinions on Federal or State Constitutional Issues

None.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have held no elected public office separate and apart from the judicial positions noted above. I have never been defeated at election for the judicial positions which I sought.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a judicial law clerk.

2. whether you practiced alone, and if so, the addresses and dates;

I never was a solo practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Upon graduation from law school, I joined the law firm of Kemp, Smith, Duncan & Hammond. Kemp, Smith's address is P.O. Box 2800, El Paso, TX 79999-2800. The physical office address is 221 N. Kansas, Suite 1900, El Paso, TX 79901. I began with the firm in August 1982. I became a shareholder in the law firm in 1987, and continued my employment with the firm until January 1991 when I left private practice for a judicial position.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I was a member of the Litigation Department where I was supervised by W. Royal Furgeson. I was primarily involved in a commercial litigation practice working on cases involving antitrust, securities, fraud, DTPA, contract and banking issues. I also had occasion to be involved in some personal injury, criminal, First Amendment and family law cases. Initially, I assisted senior trial attorneys with their dockets (primarily Royal Furgeson) and eventually assumed

primary responsibility for a commercial litigation docket of my own.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I had occasion to represent numerous financial institutions, to include MBank-El Paso, Surety Savings Association, Banco Nacional de Mexico, and Credito Mexicano. I also represented numerous companies who were sued by consumers seeking relief under the DTPA Act, to include Atlantic Aviation Corporation, Simon Marketing, A-1 Mobile Homes, Wells Fargo Alarm Services, and Digital Equipment Corporation. I also represented individuals who were either related to corporate clients or had other connections to the law firm. I also represented the El Paso Herald-Post, the former local evening newspaper. I also represented several indigent criminal defendants.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court occasionally over my tenure with the law firm given the nature of my practice. I probably appeared in court most frequently in connection with criminal cases when I was an associate with the firm (1982-1987). Thereafter, I probably appeared in court less frequently given the nature of commercial litigation cases (i.e. extensive discovery, assisting other first-chair lawyers, undertaking research efforts without extensive participation in the case itself). Specific information about court appearances is based upon my recollection at the present time about matters which occurred over ten years ago and for which documentation is no longer in my possession.

2. What percentage of these appearances was in:

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

As an attorney with the Kemp, Smith firm, I practiced in both state and federal courts. I believe that I was in federal courts approximately 25% of the time, and in state courts approximately 75% of the time.

3. What percentage of your litigation was:
- (a) civil;
  - (b) criminal.

Approximately 90% of the cases for which I had primary responsibility were civil disputes and approximately 10% of cases involved criminal issues.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I probably tried 10-12 cases to verdict with 60-70% of the cases on the jury docket, and the 30-40% of the cases on the non-jury docket. I was probably associate counsel or co-counsel on 50% of the cases and sole or chief counsel on 50% of the cases.

5. What percentage of these trials was:
- (a) jury;
  - (b) non-jury.

- (a) approximately 60-70% jury trials
- (b) approximately 30-40% non-jury trials

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Adrian L. Grass, et al. v. Credito Mexicano, S.A.  
Cause No. EP-82-CA-38(H)  
(Case on appeal, 797 F.2d 220) (1986)  
United States District Court (W.D.-Texas, El Paso Div.)  
Client: Credito Mexicano, S.A.

Summary of the Case

Plaintiffs were depositors who sued the Mexican bank after the bank paid interest and principal in pesos (following Mexico's promulgation of newly legislated currency control regulations) rather than in dollars as contractually obligated.

Plaintiffs sought to recover damages alleging breach of contract, securities violations, negligence, conversion, and deceptive trade practices violations.

At the trial level, Defendant bank moved to dismiss Plaintiffs' claim based upon the application of (1) the Foreign Sovereign Immunities Act and (2) the Act of State doctrine.

The trial court initially ruled in favor of plaintiffs. Defendant thereupon filed its Motion for Reconsideration based upon a Fifth Circuit decision in Callejo v. Bancomer, S.A., 764 F.2d 1101 (5<sup>th</sup> Cir. 1985).

The Motion for Reconsideration was granted and the Court dismissed the plaintiffs' claims finding that all claims were barred by the Act of State doctrine.

On appeal, the Fifth Circuit Court of Appeals affirmed in part and reversed in part. Specifically, the Fifth Circuit concluded that the contract and conversion claims as well as claims alleging a violation of Mexican law were barred by the Act of State doctrine.

Plaintiffs abandoned claims alleging securities violations based on the Callejo decision.

The only claim which the Fifth Circuit decided could survive was the negligent misrepresentation cause of action since it was not apparent on the face of the pleadings that the Mexican currency control regulations would be directly implicated.

The Fifth Circuit did invite the trial court to reconsider this issue following additional discovery and development of the record.

Significance of the Case

From a personal point of view, this case was the result of extensive research and representation relating to all legal issues in connection with the difficulties encountered by the Mexican government from the time that all Mexican banks were nationalized, different currency regulations were promulgated, and how these occurrences affected American depositors.

At the time of nationalization, I was actively involved in the representation of Mexico's largest bank, Banco Nacional de Juarez, S.A. (Banamex) in a cases styled Bernardo Villegas v. Banamex, Cause No. EP-81-CA-330(B).

The immediate implications resulting from the nationalization of Mexican banks required familiarity with the Foreign Sovereign Immunities Act, the Act of State doctrine, and the International Monetary Fund. In connection therewith, I monitored all litigation involving these issues as they were developed in cases being litigated throughout the United States.

From a professional point of view, our efforts helped to contribute to a developing body of law and to give better definition to some rather obscure doctrines.

Nature of My Participation

I was the attorney that assumed primary responsibility for the development of the record in all Mexican bank cases being handled by the law firm. I monitored legal developments in similar cases in other jurisdictions. I prepared and coordinated legal research efforts in connection with this particular case. I, along with Royal Furgeson, participated in discovery and in client-related services for Mexican bank clients.

I had the privilege of handling the appeal and in participating in oral argument before the Fifth Circuit Court of Appeals before a panel comprised of Judges Gee, Randall, and Davis.

Judge: Hon. Lucius D. Bunton  
United States District Court

Associate Counsel: Hon. W. Royal Furgeson

United States District Judge  
200 E. Wall, Room 301  
Midland, TX 79701  
(915) 686-4040

Plaintiffs' Counsel: Carl H. Green, Esq.  
Mounce & Galatzan, P.C.  
P.O. Drawer 1977  
El Paso, TX 79950  
(915) 532-2000

2. Gas Natural de Juarez, S.A. v. Del Norte Natural Gas Co. and John Harlan;  
Cause No. EP-82-CA-38(H)  
United States District Court (W.D.-Texas, El Paso Div.)  
Client: Gas Natural de Juarez, S.A. (Intervenors)

Summary of the Case

In this action, I represented several individuals who were members of the Board of Directors of Gas Natural de Juarez, S.A., a Mexican corporation.

Prior to the institution of this lawsuit, a rival faction of the Gas Natural de Juarez Board of Directors (hereinafter "putative principals") took the position that my clients were no longer directors, a new board having been elected at a "suspicious" corporate meeting.

The putative principals instituted this action and my clients (still claiming to be the "official" Board) filed suit as intervenors.

The putative principals sought to relieve the corporation from certain contractual obligations and filed the instant action.

My clients, in addition to their desire to be recognized as the legitimate board members, did not wish to have this litigation continue choosing instead to honor the controversial contract.

Extensive discovery took place and it was ultimately decided by all parties that an appointment of a Master was in order since most witnesses could only speak Spanish and since issues relating to Mexican corporate law had to be resolved.

Judge Harry Lee Hudspeth agreed and Richard Burges Perrenot was appointed to serve in that capacity at our joint request.

Evidentiary hearings took place with the Master after which he concluded that the putative principals were in fact the legal and legitimate Board members. The Master's decision was based, in large part, upon his interpretation of certain Mexican legal scholars' works.

We appealed the Master's findings to Judge Hudspeth and presented, in addition to the evidence already presented to the Master, the testimony of Mexican legal scholars who indicated that the Master had decided the issues presented incorrectly and based upon misunderstandings of the scholars' legal works.

Judge Hudspeth reversed the Master's findings and ruled that my clients were the legitimate Board members and should direct the pending litigation.

#### Significance of the Case

The issues involved in this litigation allowed me to continue learning about Mexican law and allowed me to continue my collaboration with renowned Mexican legal scholars.

Ramon Sanchez Medal, author of De Los Contratos Civiles, the definitive treatise on Mexican contract law served as an expert witness in this case as well as in the Banamex litigation.

Oscar Vasquez del Mercado, author of Asambleas, Fusion y Liquidacion de Sociedades Mercantiles, and Walter Frisch Philipp, author of La Sociedad Anonima Mexicana, also served as expert witnesses.

Practically, the significance of the case resulted in the continued provision of natural gas to residences and businesses in Ciudad Juarez, Mexico without the disruption which could have resulted from the litigation between the supplier and the distributor over contractual issues.

#### Nature of My Participation

I assumed primary responsibility for this file participating in discovery, research, witness preparation and handling the evidentiary proceedings before the Master and before Judge Hudspeth.

I personally considered it a remarkable achievement to be able to convince a Judge that the Master selected by the parties (for his expertise in this area) was wrong



on this occasion and have the Master's findings set aside and reversed.

Judge: Hon. Harry Lee Hudspeth  
United States District Judge

Attorney for Plaintiff: Douglas C. Smith, Esq.  
Ferrell & Smith  
10514 Montwood Dr.  
El Paso, TX 79935  
(915) 593-6600

Attorney for Defendant: David Driscoll  
Carr, Flora, Carroll & Driscoll  
5809 Acacia Circle  
El Paso, TX 79912-4859  
(915) 587-1050

Following Judge Hudspeth's decision, the Intervenor was allowed to seek and was granted dismissal of the entire lawsuit. Litigation in the Republic of Mexico between the putative principals and my clients which coincided with the American litigation continued following dismissal of the American lawsuit. The final disposition in the Republic of Mexico is not known.

3. State of Texas v. George Harvey Meek  
Cause No. 47697  
Case on Appeal, 747 S.W.2d 30 (Tex.App.-El Paso, 1988);  
Court of Criminal Appeals (En Banc), 790 S.W.2d 618  
346<sup>th</sup> Judicial District Court  
Client: George Harvey Meek

Summary of the Case

Defendant was indicted for the offense of arson. He was the estranged husband of the owner of the residence which was burned. Defendant's wife was the principal suspect at the outset of the investigation, and later pled guilty to the offense.

During the course of the investigation, fire inspectors had occasion to interview Defendant at the fire inspector's office. The fire inspector and defendant recounted different versions of what transpired at the meeting.

Prior to interviewing the defendant, the fire inspector had occasion to interview Defendant's wife who, after having been given her Miranda warnings, stated that defendant had come to her house on the morning of the

fire and had threatened to "torch" her house. She later admitted that this statement was a lie.

Following her interview, the fire inspector made efforts to interview the defendant. The fire inspector claimed that the interview was solely for the purpose of gathering additional evidence against defendant's wife, notwithstanding her earlier implication of the defendant.

While the nature of the interview itself was disputed by the fire inspector and the defendant, both individuals agreed that no Miranda warnings were provided to defendant at any time.

In his statement, defendant basically denied direct involvement in the arson that took place, but did admit having encouraged and instructed his wife, i.e. "indirect" participation in the arson. He opined that his wife started the fire. These admissions certainly implicated defendant as a possible party at the very least.

A Motion to Suppress was denied by the trial court and the statement was admitted before the jury. Defendant was convicted and sentenced to serve seven years in the state penitentiary.

On appeal, the El Paso Court of Appeals concluded that the defendant's statement resulted from custodial interrogation and should not have been admissible since the Miranda warnings had not been provided. The Court of Appeals found that "it defie[d] belief that, when the statement of [the wife] regarding the [Defendant's] threat [and the Defendant's statement] are taken in conjunction, the focus of the investigation had not centered upon the [Defendant], thereby invoking the rule in Miranda."

The Court of Criminal Appeals reversed the appellate court and affirmed the judgment of the trial court concluding that the defendant's statement did not result from custodial interrogation.

#### Significance of the Case

The Court of Criminal Appeals sitting en banc had occasion to better define and articulate the appropriate test for determining what constitutes a custodial interrogation triggering the necessity of Miranda warnings.

It resolved issues developed in prior decisions by the Court of Criminal Appeals which were arguably inconsistent with each other.

Nature of My Participation

I was the attorney representing the defendant at the trial level. I engaged in discovery, prepared witnesses, argued motions, handled all trial responsibilities. Other than providing information relating to the legal issues of custodial interrogation, I had no part in the appeal to the Court of Appeals and the Court of Criminal Appeals.

Apparently, my efforts at trial were sufficient to develop a record that would allow two appellate courts to consider the issues raised, preserve the error in an appropriate manner, and identify the issue requiring scrutiny given inconsistencies in existing case law.

Judge: Hon. Jose Baca  
346<sup>th</sup> Judicial District Court  
500 E. San Antonio, Room 902  
El Paso, TX 79901  
(915)546-2119

State's Attorney: Doug Eickerman  
Lake Forest #812  
Bonner Springs, KA 66012  
(913)441-2812

4. United States v. Jaime Torres & J.T. Construction Co., Inc.  
Cause No. EP-86-CA-163(H)  
United States District Court(W.D. Tex, El Paso Div.)  
Client: Jaime Torres and J.T. Construction Co., Inc.

Summary of the Case

Defendant was a government contractor who was awarded a bid by the Department of Defense. He was indicted by a federal grand jury for making false statements and he and his company were also sued civilly based upon the identical alleged false statements.

Specifically, the government alleged that the defendants did not make all available bids known to the governmental agencies, that the defendants switched contractors without approval of the government, and that false vouchers were submitted to the government for payment.



#### Significance of the Case

This was one of the very few prosecutions in both the criminal and civil arena of a minority business contractor for false statements and false claims in the context of bids on government contracts. Damages resulting from such contracts were traditionally litigated before administrative tribunals.

Well after I left the law firm, I was still contacted by attorneys from across the country for legal research efforts and input about similar prosecutions.

#### Nature of My Participation

I was the attorney with the Kemp Smith firm who handled the civil case from the earliest stages of the investigation, determining relevant issues and witnesses, and developing a chronology of events of a very complicated construction project.

I also had occasion to assist the attorney handling the criminal case on all pre-trial matters as well as assist during the course of the criminal trial. Such assistance included research, document control, witness preparation and trial strategy development.

The criminal case was Cause No. EP-86-CR-99(H) in the United States District Court, Western District of Texas, El Paso Division.

Following acquittal in the criminal case, I handled discovery efforts in the civil case and successfully attempted to posture the case for settlement.

Judge: Hon. Harry Lee Hudspeth  
United States District Court

Co-Counsel: Bernard J. Panetta  
Caballero, Panetta & Ortega  
521 Texas Ave.  
El Paso, TX 79901  
(915) 542-0042

Plaintiff's Attorney: David Sadoff, Esq.  
United States DOJ  
Washington, D.C.  
(202) 307-0396

5. Martin & Clark v. MBank-El Paso, N.A.  
 Cause No. EP-86-CA-305(H)  
 Case on Appeal, 947 F.2d 1278 (5<sup>th</sup> Cir. 1991)  
 Trial Court: United States District Court (W.D.Tex.-El Paso Div.)  
 Client: MBank El Paso, N.A.

Summary of the Case

The two plaintiffs were investors in what can best be described as a currency transaction scheme. Together with a business associate, Lee Rogers, the three individuals sought to broker certain currency transactions and agreed to split profits resulting therefrom.

It was under these circumstances that Lee Rogers came to El Paso, Texas and had occasion to develop a banking relationship with the defendant financial institution.

Rogers was able to convince a Senior Trust Officer (and Vice-President) of the bank of the soundness of his scheme and involved his, and thereby, the bank's participation in this financial debacle.

Plaintiffs alleged that they transferred \$100,000.00 to an account at the bank in response to a memorandum from the bank officer. The memorandum is the singularly most incoherent document I had ever seen. It specifically referred to bank notes totaling \$95,000,000 paying 9% annual interest and purports to assign  $\frac{1}{2}$  of the interest due on said notes, and further alleged that said notes had been lodged in the escrow account of Rogers Development Corporation for safekeeping, when in fact the notes never existed.

When it became apparent that the currency transaction would never be consummated, Martin & Clark demanded \$100,000 plus  $\frac{1}{2}$  of the interest due on the bank notes.

With no response from the bank, plaintiffs brought suit for breach of contract, breach of fiduciary duty, fraud, negligence, conversion, civil conspiracy and civil RICO.

Significance of the Case

Given the fragile nature of the banking industry at the time of the lawsuit and the fact that the Federal Deposit Insurance Corporation had closed numerous branches of the MCorp banks, an adverse decision in

this case could possibly have put this branch into receivership.

The possibility of predicting the outcome in this litigation was so precarious that all bank Statements of Condition (at the relevant time) had specifically footnoted this particular litigation and indicated that a damage award of up to \$20,000,000 was a possibility.

Nature of My Participation

This was the last jury trial in which I participated as a member of the law firm. The trial took place in June 1990.

Even though the case was filed in 1986, little discovery had been done in the case when the case was transferred from Judge Harry Lee Hudspeth to Judge Lucius D. Bunton. The trial date was set two months following the transfer. All efforts to continue the trial setting as well as efforts to resolve the case short of trial were unsuccessful.

Royal Furgeson and I both tried the case to a jury and we split all trial responsibilities. I handled discovery efforts and did much of the research.

We traveled from Buckhannon, West Virginia to Columbus, Ohio to Los Angeles, California to complete discovery, coordinated research efforts with teams of young lawyers, prepared trial briefs and exhibits, prepared witnesses and developed trial strategies and themes within a two month period of time.

Judge: Hon. Lucius D. Bunton  
United States District Court

Associate Counsel: Hon. Royal Furgeson  
United States District Court  
200 E. Wall, Room 301  
Midland, TX 79701  
(915)686-4040

Plaintiffs' Attorney: Gordon Stewart, Jr., Esq.  
2211 E. Missouri, Suite S-310  
El Paso, TX 79902  
(915)532-0516

The jury returned a defense verdict and made no award of damages to plaintiffs. The case was appealed to the Fifth Circuit and the judgment of the trial court was affirmed.

Please note that over ten years have elapsed since I last practiced with the Kemp, Smith law firm and information about cases which I handled while I was a member of the firm is no longer in my possession. I have made a sincere effort to provide information responsive to this request to the best of my ability. The cases listed below also were cases in which I had substantial involvement, but cases for which I do no longer possess enough information to provide the details which have been requested. The information currently available is set forth below.

1. Bernard Villegas v. Banamex (Banco Nacional de Mexico, S.A.) And Casa de Bolsa Banamex, S.A. de C.V.  
 Cause No. EP-81-CA-330  
 Client: Banamex & Casa de Bolsa Banamex  
 Court: United States District Court  
 Western District of Texas, El Paso Division  
 Judge: Hon. Lucius D. Bunton  
 Summary of the Case: Lawsuit by bank customer who alleged that he was forced to enter into settlement agreement with financial institutions after refused to be given gold "centenarios".  
 Significance: During the pendency of this litigation, the Mexican government nationalized all banks in the Republic of Mexico. Issues arose about the applicability of the Foreign Sovereign Immunities Act and its effect on pending litigation.  
 My Participation: I was primarily involved with research since the litigation was already in progress when I was first hired by the law firm. I prepared legal briefs and other memoranda.  
 Associate Counsel: Hon. Royal Furgeson  
 United States District Judge  
 200 E. Wall, Room 301  
 Midland, TX 79701  
 (915) 686-4040  
 Co-Counsel: Richard N. Carrell  
 Fulbright & Jaworski  
 1301 McKinney, Suite 5100  
 Houston, Texas 77010-3095  
 (713) 651-5151  
 Plaintiff's Attorney: Carl H. Green  
 Mounce and Galatzan  
 P.O. Drawer 1977  
 El Paso, TX 79901  
 (915) 532-2000  
 Dean Hester  
 Scott & Hulse  
 200 E. Main, 11<sup>th</sup> Floor  
 El Paso, TX 79901  
 (915) 533-2493

The case eventually settled prior to trial.

2. R.A. Knapp, Ratliff, Brock d/b/a Ratliff & Brock v. O'Kane, Ind. And d/b/a/ Franklen Computer Systems, Inc., Digital Equipment Corp., Kennedy Data Systems, Inc., Kennedy d/b/a Business Data Systems  
 Cause No. 80-4045  
 Client: Digital Equipment Corporation  
 Court: 34<sup>th</sup> Judicial District Court  
 Judge: Hon. Jerry Woodard  
 Summary of the Case: Lawsuit by consumer accountants who alleged that the computer which they purchased could not perform as represented thereby resulting in damages from downtime and lost profits.  
 Significance: DTPA action  
 My Participation: Research, discovery and posturing for eventual settlement.  
 Associate Counsel: Hon. Royal Furgeson  
 United States District Judge  
 200 E. Wall, Room 301  
 Midland, TX 79701  
 (915) 686-4040  
 Plaintiffs' Attorney: Malcolm McGregor  
 1011 N. Mesa  
 El Paso, TX 79902  
 (915) 544-5230  
 Other Counsel: Myer Lipson  
 Lipson & Dallas  
 1444 Montana, Suite 200  
 El Paso, TX 79902  
 (915) 544-2600  
 Sal Rebe  
 Guevara, Rebe, Baumann, & Coldwell  
 4171 N. Mesa, Suite B-201  
 El Paso, TX 79902  
 (915) 544-6646

The case settled prior to trial.

3. State of Texas v. William John Mallow  
 Cause No. 35262-327  
 Client: John Mallow  
 Court: 327<sup>th</sup> Judicial District Court  
 Judge; Hon. Enrique H. Pena (Ret.)  
 1444 Montana, Suite 205  
 El Paso, TX  
 (915) 533-8267  
 Summary of the Case: Mallow was convicted of Murder and filed a post-conviction writ alleging that he was denied effective assistance of counsel as a result



of a conflict which his attorney was alleged to have not disclosed.

Significance: Mallow had been represented at trial by Joe Chagra who was thereafter convicted of criminal conspiracy in connection with the murder of Judge John Wood. The evidentiary hearing which I was directed by Judge Pena to handle required the testimony of Joe Chagra (who was bench warranted to El Paso from prison) and Charles Harrelson (who was also bench warranted to El Paso from prison).

My Participation: I believe that I handled all responsibilities in securing the attendance of the witnesses and presenting the evidence at the hearing. I prepared the witnesses for their testimony, did the necessary research and prepared proposed findings of fact and conclusions of law for the court.

Associate Counsel: Hon. Royal Furgeson  
United States District Judge  
200 E. Wall, Room 301  
Midland, TX 79701  
(915) 686-4040

State's Attorney: Hon. Guadalupe Rivera  
168<sup>th</sup> Judicial District Court  
500 E. San Antonio, Room 602  
El Paso, TX 79901  
(915) 546-2141

4. Robert Barreras v. Kevin Welch

Cause No. 87-5025

Client: Kevin Welch

Court: 346<sup>th</sup> Judicial District Court

Judge: Hon. Jose Baca

Summary of the Case: Plaintiff sued defendant alleging to have suffered damages from an assault.

Plaintiff sought actual and punitive damages.

Significance: This is what I believe to be the only personal injury case which I tried to verdict.

My Participation: I handled all responsibilities in this case including discovery, trial preparation, settlement discussions, trial and post-verdict motions.

Plaintiff's Attorney: Charles Anderson  
4800 Excalibur  
El Paso, TX 79902  
(915) 532-1031

I believe the jury awarded damages totaling \$7,500, a sum substantially less than the amount demanded prior to trial. My client decided against an appeal and paid the judgment.

5. Farmer & Dell Valley Irrigation, Inc. v. Elliott v. Reinke Manufacturing Co., Inc.  
Cause No. 2329-34 and 2308-A  
Client: Reinke Manufacturing Co., Inc.  
Court: 34<sup>th</sup> Judicial District Court, Hudspeth County  
Judge: Hon. Jerry Woodard (Ret.)  
(915) 479-4990

Summary of the Case: Plaintiff brought this third-party action against the manufacturer of the sprinkler system which he purchased and for which he refused to pay, alleging violations of the Uniform Commercial Code and violations of the DTPA statute.

Significance: This is one of the non-jury suits which I can recall and I believe it was my first trial for which I had sole responsibility. Aside from that, it was fairly insignificant.

My Participation: I handled all responsibilities in the case to include discovery, witness preparation, trial, and post-trial activities.

Plaintiff's Counsel: C.R. 'Kit' Bramblett  
2211 E. Missouri, Suite N-221  
El Paso, TX 79903  
(915) 533-1635

Defendant's Attorney: Richard T. Marshall (fired at trial)  
5959 Gateway West, Suite 250  
El Paso, TX 79925  
(915) 779-6627

Charles Cole (Associate for Marshall)  
Hearing Officer  
630 Forest Park, Suite 900  
Dallas, TX 75235  
(214) 350-9299

The court found that the third-party defendant was not liable and no damages were awarded.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I believe that much of the information which is responsive to this question has been provided in response to the preceding question.

However, I wish to additionally advise the Committee of my efforts as the Judge of the Juvenile Court to engage the Juvenile Probation Department in meaningful pro-active and early prevention and intervention efforts so as to deter future delinquent conduct and provide assistance to families in need. Specifically, the Department began providing tours to local school classes and inviting tours of students to attend and view juvenile court proceedings. Additionally, I have also had occasion to visit numerous campuses addressing groups as small as ten and as large as 300 in an effort to inform children about the consequences of delinquent behavior. Also, probation officers and juvenile court personnel are constantly participating in career day presentations and speaking to different community groups about issues relevant to reducing juvenile crime.

Similarly, I have actually presided over a civil case at the University of Texas at El Paso for the purpose of allowing the University pre-law students the opportunity to personally view a fully contested civil trial. Hopefully, this learning experience will allow students who might not otherwise have the ability to leave campus and attend a trial at the downtown courthouse an opportunity to gain insight into the dynamics of a civil case.

I am hopeful that these opportunities will allow members of the community to learn more about the third branch of government.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I presently am a member of the Texas County and District Retirement System (vested) and the Employees Retirement System of Texas (not vested). It is my understanding that I can expect to receive a return of all contributions which I have made into my pension account with the Employees Retirement System of Texas if I do not vest prior to my resignation from my current position. It is also my understanding that I am not eligible to draw funds from the Texas County and District Retirement System until the age of sixty-two.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I am mindful of the need to avoid conflicts of interest. I intend to implement a regular review of the docket and of my financial holdings to ensure that conflicts are avoided because of financial arrangements. Additionally, I fully intend to comply with all financial disclosure requirements and make the information available by providing same to the Clerk's office for inspection by counsel. Of course, I would certainly bring any matter which I believe a party may be concerned about to the attention of the attorneys on a given case so that they could consider the matter and decide how to proceed.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

A copy of the Financial Disclosure Report (Form AO-10) is attached hereto for your review.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

A copy of the financial net worth statement is attached hereto for your review.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Not including my own judicial campaigns, I have served as a Campaign Treasurer for Marshall St. John, candidate for the State Board of Education. He was defeated by Rene Nunez. I believe the campaign was in 1986. As treasurer, I was required to file the Contributions/Expenses Report.

AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1976, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Martinez, Philip R.	<b>2. Court or Organization</b> U.S. District Court - W.D. Tex	<b>3. Date of Report</b> 10/10/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. District Judge	<b>5. Report Type (check type)</b> <input checked="" type="checkbox"/> Nomination, Date 10/09/2001 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/2000 to 09/30/2001
<b>7. Chambers or Office Address</b> c/o 327th District Court 500 E. San Antonio, Room 606 El Paso, TX 79901	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)☐ **POSITION**  
**NONE** (No reportable positions.)**NAME OF ORGANIZATION / ENTITY**

1. Director	Texas Center for the Judiciary, Inc.
2. Director	El Paso Holocaust Museum & Study Center
3. Chairman	El Paso County Juvenile Board

**AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)**DATE****PARTIES AND TERMS**☐ **NONE** (No reportable agreements.)

Texas County &amp; District Retirement System: pension

Employees Retirement System of Texas: pension

**NON-INVESTMENT INCOME**

(Reporting individual and spouse; see pp. 17-24 of Instructions.)

**DATE****SOURCE AND TYPE****GROSS INCOME**☐ **NONE** (No reportable non-investment income.)

(yours, not spouse's)

1999	State of Texas	\$101,796.14
99	El Paso County	\$ 9,299.94
99	Fees for Ceremonies	\$ 1,605.00
99	Public School System, Teacher	

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Martinez, Philip R.Date of Report  
10/10/2001IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	NONE	EXEMPT
2		
3		
4		
5		
6		
7		

## GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	NONE	EXEMPT	
2			
3			
4			

## LIABILITIES

(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	NONE		
2			
3			
4			
5			

DES.: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

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<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Martinez, Philip R.	Date of Report 10/10/2001
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**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)*

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 IRA #1 (Traditional)					EXEMPT				
2 --Washington Mutual Investors	D	Dividend	L	T	EXEMPT				
3 --Europacific Growth	D	Dividend	K	T	EXEMPT				
4 IRA #2					EXEMPT				
5 --Investment Co. of America	A	Dividend	J	T	EXEMPT				
6 --New Perspective Fund	A	Dividend	J	T	EXEMPT				
7 Brokerage Acct. #1					EXEMPT				
8 --Growth Fund of America	A	Dividend	J	T	EXEMPT				
9 --New Economy Fund	A	Dividend	J	T	EXEMPT				
0 --Centennial Money Market Fund	B	Dividend	J	T	EXEMPT				
1 Brokerage Acct. #2					EXEMPT				
--Schwab One Interest	A	Interest	J	T	EXEMPT				
--Tyco Common Stock	A	Dividend			EXEMPT				
--Biotime Common Stock		None			EXEMPT				
--Sabre Holdings		None			EXEMPT				
--AMR Corp. Common Stock(*)		None			EXEMPT				
--Oracle Common Stock(*)		None			EXEMPT				

in Codes: A=\$1,000 or less 1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
des: J=\$15,000 or less 1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
Codes: Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	



<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Martinez, Philip R.				Date of Report 10/10/2001	
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(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

**VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
18 --NASDAQ 100		None	J	T	EXEMPT				
19 --Intel Common Stock	A	Dividend	J	T	EXEMPT				
20									
21									
22									
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24									
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Codes: A=\$1,000 or less D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
J=\$15,000 or less D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
Codes: Q=Appraisal U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

FORM 277-00 FAA		W/VID
Name of Person Reporting Martinez, Philip R.		Date of Report 10/10/2001

## FINANCIAL DISCLOSURE REPORT

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.  
*(Indicate part of report.)*

(\*) The AMR Corp. Common Stock and the Oracle Common Stock were sold during the reporting period and a gain was realized upon sale. While the stock was owned by Reporter, no income from dividend, interest, or rent was received. Since Reporter is exempt from reporting transactions (Part VII, Section D), information about the

**FINANCIAL DISCLOSURE REPORT**Name of Person Reporting  
Martinez, Philip R.Date of Report  
10/10/2001**SECTION HEADING.** (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

**PART 1. POSITIONS** (cont'd.)

Line	Position	Name of Organization/Entity
4	Secretary, Chair-Elect	Juvenile Law Section, State Bar of Texas
5	Chairman	Harvard Schools & Scholarships Committee

**PART 3. NON-INVESTMENT INCOME** (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000	State of Texas	\$101,702.00
6	2000	El Paso County	\$ 9,299.94
7	2000	Fees for Ceremonies	\$ 1,375.00
8	2000	Public School System, Teacher	
9	2000	Self-Employed, Teacher	
0	2001	State of Texas	\$ 84,750.00
1	2001	El Paso County	\$ 7,153.80
	2001	Fees for Ceremonies	\$ 1,425.00
	2001	Public School System, Teacher	

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**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting
Martinez, Philip R.

Date of Report
10/10/2001

**IX. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date 10/10/01

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

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## FINANCIAL STATEMENT

NET WORTH  
(AS OF JUNE 30, 2001)

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	16	300 00	Notes payable to banks--secured	14	000 00
U.S. Government securities--add schedule			Notes payable to banks--unsecured		
Listed securities--add schedule	12	32 0 00	Notes payable to relatives		
Unlisted securities--add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	5	000 00
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful		200 00	Real estate mortgages payable--add schedule	70	000 00
Real estate owned--add schedule		165 000 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts--itemize:		
Autos and other personal property	39	600 00			
Cash value--life insurance					
Other assets--itemize:	337	470 00			
(see attached schedule)					
			Total Liabilities	89	000 00
			Net Worth	481	890 00
Total Assets	570	890 00	Total Liabilities and net worth	570	890 00
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	-0-		Are any assets pledged? (Add schedule.)	-0-	
On leases or contracts	-0-		Are you defendant in any suits or legal actions?	NO	
Legal Claims	-0-		Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax	-0-				
Other special debt	-0-				

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SCHEDULES FOR NET WORTH STATEMENTLISTED SECURITIES (as of 6/30/01)

Stocks:	Intel Corp	200 Shares	\$ 5,850.00
	Oracle Corporation	100 Shares	\$ 1,900.00
Other Assets:	NASDAQ 100	100 Shares	\$ 4,570.00

REAL ESTATE OWNED (as of 6/30/01)

Residence: El Paso, TX  
One Lot

OTHER ASSETS (as of 6/30/01)

Household Items	\$ 110,000.00
Traditional IRA (Mutual Funds)	\$ 100,900.00
Roth IRA-Philip (Mutual Funds)	\$ 7,600.00
Roth IRA-Mayela (Mutual Funds)	\$ 7,600.00
A.G. Edwards & Sons-Education (Mutual Funds)	\$ 28,600.00
Texas County & District Retirement (Philip) (as of 12/31/2000)	\$ 16,370.00
Employees Retirement System of Texas (Philip) (as of 8/31/2000)	\$ 59,800.00
Teacher Retirement System of Texas (Mayela) (as of 8/31/2000)	\$ 6,600.00

REAL ESTATE MORTGAGES PAYABLE

Bank of America	Balance: \$ 71,578.29	Secured by Residence
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## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As an attorney, I was often appointed to represent indigents charged with crimes at reduced levels of compensation. At no time did I avoid this responsibility nor did I put forth any less effort to provide quality representation. I continued to represent these individuals while I was an associate with the law firm.

I also had occasion to serve as a member of the Board of the El Paso Legal Assistance Society from 1985 to 1987 and again in 1990 until 1992. I served as Chairman of the Board, 1986-87, and was directly involved during the period of time that a collective bargaining agreement was reached when the Legal Assistance Society unionized. The delivery of services to the clients of the organization increased as did the morale of the legal services providers. Additionally, I was involved in the efforts to support the El Paso Pro Bono project which was implemented during this period of time (and required all licensed attorneys to represent indigent parties in two divorce cases per year at absolutely no cost) and which program was administered by the Legal Assistance Society. In the early 90's, I was active in efforts to continue the funding of the Legal Assistance Corporation and have written letters of support over the years so as to ensure the continued delivery of services to those most in need. My year as the Chairman involved a substantial period of personal time as did the year when a collective bargaining agreement was being negotiated.

I also served on the State Bar of Texas Legal Services to the Poor in Civil Matters Committee from 1988 to 1991, the formative year's of the State's IOLTA (Interest on Lawyer's Trust Accounts) program. I recall participating in the Committee during the study which led to the development of said program. It was readily apparent that accessibility to the courts for the great number of indigent Texans was virtually non-existent.

As a judge, my direct participation in the delivery of services to the indigent is much more restricted, if not completely prohibited. Nevertheless, I have continued to support programs which increase access for those who have legal needs and are unable to obtain representation by private counsel. I am a student of different programs throughout the state which will serve as models for the delivery of services to the indigent. I have supported the Domestic Relations Office which serves the needs of many members of the local community in connection with divorce, support and custody issues, obviating the need for formal court involvement and thus legal representation.

Finally, I have been active on various Boards of community organizations which specifically serve the disadvantaged. These Boards include the El Paso Cancer Treatment Center, the Hispanic Leadership Institute, the National Conference of Christians and Jews, the El Paso Service and Education Labor Force and the Boy Scouts of America.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not currently belong nor have I belonged to any organization which discriminates on the basis of race, sex or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, the Gramm-Hutchison Judicial Advisory Committee screens and recommends candidates for the Senators to consider recommending to the President for nomination. I appeared before the Gramm-Hutchison Advisory Committee in San Antonio, Texas on Friday, May 11, 2001. I then was interviewed by both Senator Hutchison and Senator Gramm in Washington, D.C. on Wednesday, May 23 and Thursday, May 24, respectively. On Monday, June 11, 2001, I was contacted by Senators Gramm and Hutchison and informed that they would be asking the President to nominate me for the position of United States District Judge in the Western District of Texas, El Paso Division. On June 26, 2001, I met personally with Judge Al Gonzales (Counsel to the President). I was informed on Monday, July 9, 2001 that the President had allowed the recommendation to go forward. Thereafter, I received numerous questionnaires and forms to complete for the FBI Security Clearance Review and the Department of Justice Review. I have completed and returned all requested materials and have also met with members of the FBI and been personally interviewed (by phone) by the Office of Legal Policy with the Department of Justice.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.



5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Constitution of the United States allocates powers among the three branches of the government. The separation of powers and structure of national government is specifically addressed in Articles I, II, and III of the Constitution. It is a fundamental premise that the integrity and autonomy of the three branches should be respected and that there should be no interference by one branch in the internal affairs of another branch.

I strongly believe that the role of the courts is a limited role. It is a role which does not affirmatively seek out cases and issues, but decides those matters which are appropriately before it based upon a real controversy. The judiciary is poorly equipped to address issues which are best left to the legislative and deliberative process, and involvement by the judiciary in such issues erodes the credibility in the judicial branch which is absolutely essential in a free democracy.

As one who respects and follows the Constitution and the separation of powers, I believe that the judiciary should never be a mechanism for judges to impose their personal views. As a trial judge, I seek to be faithful to legal precedent and decide only the issue(s) presently before the court.

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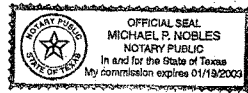
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AFFIDAVIT

I, PHILIP R. MARTINEZ, do swear that  
the information provided in this statement is, to the best of my  
knowledge, true and accurate.

10/10/01  
(DATE)

Philip R. Martinez  
(NAME)



Michael P. Nobles  
(NOTARY)

Senator DURBIN. Thank you.  
Mr. Royal?

**STATEMENT OF C. ASHLEY ROYAL, NOMINEE TO BE DISTRICT  
COURT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA**

Mr. ROYAL. Thank you very much for the opportunity to be here today. I really count it as a great privilege.

I am fortunate enough to have with me my lovely wife, Ellen Royal. Seated next to her is my father, Charles Royal, and then I have a cousin back here, Chuck Royal, Jed Royal is back there, and Marie Weed, a friend.

[The biographical information of Mr. Royal follows.]

*final 14*

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

CHARLES ASHLEY ROYAL

2. Address: List current place of residence and office address(es).

Residence: Macon, Georgia

Office: JONES, CORK & MILLER, LLP  
P.O. Box 6437 (31208-6437)  
435 Second Street  
Macon, Georgia 31201

3. Date and place of birth.

September 14, 1949, Augusta, Georgia

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Ellen Smith Royal. She is employed part-time as a math teacher at First Presbyterian Day School, Macon, Georgia.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

TEXAS MARITIME ACADEMY, TEXAS A&M UNIVERSITY, Summer School Program, 1967

FURMAN UNIVERSITY, 1967-1968 (freshman year)

AUGUSTA COLLEGE, Fall, 1968

UNIVERSITY OF GEORGIA, 1969-1971 - AB Degree in History  
(June, 1971)

UNIVERSITY OF GEORGIA SCHOOL OF LAW, 1971-1974 - JD Degree  
(June, 1974)

UNIVERSITY OF GEORGIA, 1973-1978, MA in Political Science,  
(December, 1978)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

District Attorney's Office, Chatham Judicial Circuit, Intern  
District Attorney, Savannah, Georgia.

District Attorney's Office, Augusta Judicial Circuit,  
Assistant District Attorney, Augusta, Georgia, Summer of  
1974 to December, 1975.

Howard, Howard & Royal, Partner, Decatur, Georgia, January,  
1976 to May, 1976.

Public Defender, Brunswick, Glynn County, Georgia, June,  
1976 to March, 1977.

Falligant, Kent & Toporek, Associate, Savannah, Georgia,  
March, 1977 to October, 1978.

Solo Practice, Augusta, Georgia, October, 1978 to Fall,  
1979.

Fulcher, Fulcher, Hagler, Harper & Reed, Associate, Augusta,  
Georgia, Fall, 1979 to May, 1980.

Kent, Barrow & Royal, Partner, Savannah, Georgia, May, 1980  
to December, 1983.

Jones, Cork & Miller, LLP, Partner, Macon, Georgia, January,  
1984 to present. (Of counsel 1984-1985).

President, Central Georgia Opera Guild.  
Officer, First Presbyterian Church.  
Adjunct Faculty, University of Georgia Law School.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Georgia Bar Association

Committee on Professionalism, Georgia Bar Association

Georgia Defense Lawyers' Association

American Board of Trial Advocates

Defense Research Institute

Augustus Bootle Inns of Court

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I have not belonged to any organizations which actively lobbied for public bodies.

President, Central Georgia Opera Guild

Manager, Macon Lady Flames (AAU Girls Basketball)

Member, Macon Health Club

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for

administrative bodies that require special admission to practice.

I am admitted to all state and federal courts in Georgia. I was admitted to the state trial courts in June of 1974, to the United States District Court, Southern District of Georgia on May 19, 1978, the United States District Court, Northern District of Georgia on July 9, 1984, and the United States District Court, Middle District of Georgia on May 24, 1985. I was admitted to the United States Court of Appeals Eleventh Circuit on October 20, 1986. I was admitted to the Georgia Supreme Court on May 4, 1982, and the Georgia Court of Appeals on January 10, 1978.

There have been no lapses in my memberships in any of these courts, and I have never appeared before any administrative bodies which require special admission to practice.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"The Defense of Medical Causation," Trial, October 1987.

"Introduction to the Medical Causation Defense in Toxic Tort Cases," Defense Counsel Journal, Vol. 55, January 1988.

Co-Author, Handbook on Georgia Medical Malpractice Law, The Harrison Company, 1991.

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in excellent health. My last physical examination was on July 7, 2001.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

District Attorney's Office, Chatham Judicial Circuit, Intern District Attorney, Savannah, Georgia (address unknown - office has moved).

District Attorney's Office, Augusta Judicial Circuit, Assistant District Attorney, Augusta, Georgia, Summer of 1974 to December, 1975 (address unknown - office has moved).

Howard, Howard & Royal, Partner, Decatur, Georgia, January, 1976 to May, 1976 (address unknown).

Public Defender, Brunswick, Glynn County, Georgia, June, 1976 to March, 1977 (address unknown).

Falligant, Kent & Toporek, Associate, 111 West Congress Street, Savannah, Georgia, March, 1977 to October, 1978.

Solo Practice, 828 Greene Street, Augusta, Georgia, October, 1978 to Fall, 1979.

Fulcher, Fulcher, Hagler, Harper & Reed, Associate, P.O. Box 1477 Augusta, Georgia, 30903-1477, (706) 724-0171, Fall, 1979 to May, 1980.

Kent, Barrow & Royal, Partner, 111 West Congress Street, Savannah, Georgia, May, 1980 to December, 1983.

Jones, Cork & Miller, LLP, Partner, 435 Second Street, Macon, Georgia 31201, (478) 745-2821, January, 1984 to present. (Of Counsel 1984-1985).

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I graduated from law school in 1974. In 1973 I worked as Intern District Attorney under the Third Year Practice Act at the Chatham County District Attorney's Office in Savannah, Georgia. Under this act I was authorized to try cases as long as a member of the bar sat with me during the



trial. The Chief Assistant District Attorney was Grayson Lane, 601 Reynolds St., Brunswick, Georgia 31521 (912) 264-6406. The District Attorney, Andrew Ryan, is now deceased.

During that summer I tried five jury trials including an armed robbery case and a murder case. Four of the cases were tried in Superior Court of Chatham County, and one was tried in State Court of Chatham County, which has misdemeanor criminal jurisdiction. I was lead counsel in all five cases. I also tried approximately 30 non-jury misdemeanor cases in this summer program.

After graduating from law school, I worked as Assistant District Attorney in Augusta, Richmond County, Georgia. I specialized in prosecuting armed robbery cases and tried approximately 20-25 jury trials as lead counsel. I also handled preliminary hearings, arrest and search warrant issues, evidence suppression hearings and grand jury proceedings. This job exposed me to all types of criminal prosecution.

In 1976 I worked as partner in Howard, Howard & Royal for approximately five months. The senior partner died, and I left the firm for another position. My practice primarily involved criminal defense.

From the summer of 1976 until the spring of 1977, I served as Public Defender for Brunswick, Glynn County, Georgia. During the course of my practice as the public defender, I represented indigent defendants accused of misdemeanors and felonies. This representation involved all aspects of criminal defense work, including trials in the Superior Court and State Court of Glynn County.

In March of 1976, I was hired as an associate by the firm of Falligant, Kent & Toporek in Savannah, Georgia. I worked there for approximately a year and a half handling general insurance defense work, which included defending automobile cases, premises liability cases, malicious prosecution cases, and insurance coverage disputes. While working for this firm, I tried my first case in federal court in Savannah.

In the fall of 1978 I returned to my hometown, Augusta, and opened a solo practice at 828 Greene Street. I was hired as

an associate by Fulcher, Fulcher, Hagler, Harper & Reed where I did general insurance defense work. (The address is P.O. Box 147, Augusta, Georgia 30903-1477. All of the named partners are either retired or deceased. David Hanks is now senior partner in the firm, and he was at the firm while I worked there. The firm telephone number is (706) 724-0171.)

I was working in that firm when one of the partners in my old firm of Falligant, Kent & Toporek, which had since split up, invited me back to Savannah as a partner. I left Augusta in 1980 and became a partner in Kent, Barrow & Royal, and I returned to a general insurance defense practice. The firm address was P.O. Box 8185, Savannah, Georgia, 31412. This firm no longer exists, but Martin Kent can be reached in Savannah at (912) 238-1500. Charlie Barrow can be reached at (912) 234-7215.

It was approximately 1981 when I began defending Shook & Fletcher Insulation Company in the statewide asbestos products liability litigation. My representation of that company lasted for approximately five years, and I handled 70-80 asbestos cases filed in the Southern District of Georgia, Savannah and Brunswick Divisions, and the Northern District of Georgia, Atlanta Division. The plaintiffs' attorney in most of these cases was Richard Middleton of Savannah. His address is 218 West Jones Street, Savannah, Georgia, 31401, (912) 234-1133.

In approximately 1983 I began the defense of another type of products liability toxic tort case on behalf of Guerdon Industries, a mobile home manufacturer. The cases alleged injury as a result of breathing fumes from formaldehyde used in the particleboard in the mobile homes. The plaintiffs were mobile home owners. Those cases were filed in federal court in Savannah and Atlanta. Richard Middleton was plaintiff's counsel in most of these cases.

In 1984 I became Of Counsel with Jones, Cork & Miller where I was hired to do medical malpractice defense. In 1985 I became a partner and have continued in that capacity to the present. The firm address and telephone number is 435 Second Street, Macon, Georgia 31201 (478) 745-2821. My partner, Jerome Strickland, can provide information about my practice and involvement in the firm.

The early part of my law practice was devoted exclusively to either the prosecution or defense of criminal cases. During that time I tried approximately 40 non-jury misdemeanor cases and approximately 30 to 35 jury trials. As part of this work, I prosecuted or defended many preliminary hearings, presented cases before the grand jury, and handled suppression hearings both for the State and criminal defendants.

The second stage of my career, from approximately 1976 until 1981, involved general insurance defense work as described above.

In the third stage of my career, beginning in the early 1980's, my practice became more involved in complex litigation in the defense of toxic tort cases, asbestos and formaldehyde. This involved very intensive work in federal court in Savannah and Atlanta.

In 1984, when I moved to Macon, I continued defending toxic tort cases, started defending medical malpractice cases, and I also did some general insurance defense. This was the fourth stage of my career, and I engaged in the defense of many complex medical malpractice cases.

In the mid-to-later 1980's, my practice in federal court began to evolve from cases involving diversity jurisdiction to federal question cases. About this time I began representing the City of Macon Police Department in defending excessive force cases and sexual harassment claims. At about the same time I began representing the Macon Water Authority in employment discrimination cases. I would call this the fifth stage of my career.

In approximately 1995, I also began representing the Bibb County Public Schools on employment-related issues and very recently First Amendment religious freedom claims. During the course of the last fifteen years of representing municipal authorities, I have handled multiple cases involving claims filed under §1983 and Title VII. This includes First Amendment claims, Fourth Amendment claims, and Title IX claims. I have also handled ADA and Rehabilitation Act cases and represented private employers in Title VII cases and on FMLA issues. The School

Superintendent's name is Sharon Patterson, Bibb County Public Schools, 484 Mulberry Street, Macon, Georgia 31208, (478) 765-8711.

In the past four years I have become actively involved in alternative dispute resolution as a neutral and have had very successful results. Last year I handled approximately 25 mediations and two arbitrations. Judge Lamar Sizemore can describe my mediation skills and experience. His address is Bibb County Superior Court, 310 Courthouse, 601 Mulberry Street, Macon, Georgia 31201 (478) 749-6535.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Over the course of my practice I have represented the State of Georgia in criminal prosecutions and defended indigent and paying clients accused of crimes. A significant portion of my practice has been involved in defending clients on behalf of insurance companies.

More recently I have represented municipal authorities such as the City of Macon, Macon Water Authority, the Bibb County Board of Education, the Henry County Board of Education, the Baldwin County Board of Education, the Baldwin County Hospital Authority, and the Jasper County Hospital Authority in federal court. I also represent Wesleyan College in employment matters.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared frequently in state court during the early part of my career. The middle portion of my career involved both state and federal court appearances, but in recent years because of my employment discrimination and education law practice, I have appeared more often in federal court and deal more often with federal issues.

2. What percentage of these appearances was in:

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

- (a) Federal courts - over the past ten years, 50-60%.
- (b) State courts - 40-50%.
- (c) Other courts - Not applicable.

3. What percentage of your litigation was:

- (a) civil;
- (b) criminal.

- (a) Civil - 85%.
- (b) Criminal - 15%.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

It is quite difficult to provide the specific number of cases that I have tried because I have not kept records. I would estimate that I have tried 30-35 criminal jury trials and approximately 55 civil jury trials. I was sole counsel in the overwhelming majority of these cases, lead counsel on six to eight cases and associate counsel on approximately five jury trials.

I have tried approximately 50 non-jury cases.

5. What percentage of these trials was:

- (a) jury;
- (b) non-jury.

- (a) Jury - 65%.
- (b) Non-Jury - 35%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your

participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Robert Baldwin and Melissa Bradbury, Individually and as Parents, next friends and natural Guardians of Ryan Baldwin and Rebecca Baldwin v. Bibb County School District, Chip Mesasner, and other presently unknown individuals, U.S. District Court, Middle District, Macon Division, Civil Action No. 5:00 CV 0452-1. I handled this case in the fall of 2000. It involved a First Amendment establishment clause violation that primarily arose out of an incident at a Bibb County elementary school where the principal allowed members of the Gideons to come to the school and use a table in the cafeteria to pass out Bibles to the fifth grade classes. I was called on by the Superintendent to defend this case based on my experience in handling other federal claims.

Not having had experience with alleged establishment clause violations, I thoroughly researched the law, then promptly met with the school administrators and advised them about what was appropriate and inappropriate under the rules of the Constitution, instructed the Superintendent to write the Gideons to advise that organization not to come back to the Bibb County Public Schools, and drafted policies consistent with the establishment clause and the free exercise clause.

I consulted with Marc Stern of the American Jewish Conference in New York on a number of occasions about how to handle the legal issues in this case, provided school employees with written materials, and had the First Amendment Center from Nashville conduct a seminar for administrators and key personnel from all the schools. As a consequence, this case was settled and dismissed without any payment of damages, only attorney's fees. (I have subsequently handled a similar case for the Polk County School District.)

Judge Duross Fitzpatrick  
P.O. Box 1014  
Macon, Georgia 31202-1014  
(478) 752-3500

John D. Wales, Esq., plaintiff's counsel for the ACLU  
600 Village Trace  
Suite 200, Building 23  
Paper Mill Village  
Marietta, Georgia 30067  
(770) 612-1266

2. Kimberly R. Groves v. Henry County School District, U.S.  
District Court, Northern District, Atlanta Division, Civil  
Action No. 1:98 CV 3486. I was lead counsel for Henry  
County School District in this reverse discrimination claim.  
Plaintiff, a school counselor, alleged that defendant had  
discriminated against her based on race when defendant hired  
a black male for a counseling position. She contended that  
she had much better credentials than the black male. This  
case was tried in April of 2000, and the jury returned a  
verdict for the defendant.

Honorable Janet F. King, Magistrate  
Richard B. Russell Building  
75 Spring Street, SW  
Room 1613  
Atlanta, Georgia 30303-3361  
(404) 215-1385

Chip Rowan, plaintiff's attorney  
Rowan & Associates  
Peachtree Center, North Tower  
235 Peachtree Street, NE, Suite 1725  
Atlanta, Georgia 30303  
(404) 586-2350

A. J. Welch, Jr., Henry County School Board attorney  
Smith, Welch & Brittain  
P.O. Box 10  
McDonough, Georgia 30253-0010  
(770) 957-3937

3. Brenda Taylor v. Bibb County Board of Education, Gene Buinger, and James Hodges, U.S. District Court, Middle District, Macon Division, Civil Action No. 5:99-CV 93-4.

This case involved multiple allegations against the three defendants primarily arising out of an alleged sexual harassment by a school principal against his secretary, the plaintiff. Plaintiff's complaint alleged claims under Title VII, §1983, §1985, §1991, gender discrimination, race discrimination, First Amendment violations, federal privacy right violations, Title VII retaliation, a Fourth Amendment search and seizure claim, Title IX, hostile environment and quid pro quo sexual harassment, wrongful termination, assault, battery, false imprisonment, invasion of privacy, and intentional infliction of emotional distress.

The case was tried to a jury for eight days, and after deliberating for approximately 30 minutes, the jury returned a verdict for all defendants.

This case was very complex factually and legally. It involved numerous difficult legal issues, and many of plaintiff's claims were dismissed before the case went to the jury. Many of plaintiff's co-workers testified about her misconduct at work and her unprofessional relationship with a male co-worker. My defense was that plaintiff made up false allegations against the principal to cover up her own misconduct at work.

Judge Duross Fitzpatrick  
P.O. Box 1014  
Macon, Georgia 31202-1014  
(478) 752-3500

Michael B. King, attorney for plaintiff  
5751 Riverdale Road, Apt. 23B  
College Park, Georgia 30349-6354  
(770) 991-0550

Mary Katz, attorney for James Hodges  
Chambless, Higdon & Carson  
P.O. Box 246  
Macon, Georgia 31202-0246  
(478) 745-1181



4. Joyce Butler v. Owens-Corning Fiberglas, et. al., U.S. District Court, Middle District, Macon Division, Civil Action No. 5:96 CV 311-1. I represented plaintiff Johnny Butler, who died shortly before the time of trial, and his widow, Joyce Butler. The case involved a suit against Owens-Corning Fiberglas and other defendants whose asbestos products allegedly caused Johnny Butler to die of mesothelioma. All but one of the defendants settled out before trial.

I associated Richard Middleton of Savannah, Georgia, recent past president of ATLA. He was lead counsel, and I was co-counsel. My primary role in the case was to present most of the plaintiff's case, including expert witness testimony about the cause of his death. This case lasted for two weeks during May of 1997 and ended in a verdict for the defendant.

Judge Duross Fitzpatrick  
P.O. Box 1014  
Macon, Georgia 31202-1014  
(478) 752-3500

Richard Middleton, lead plaintiff's counsel  
P.O. Box 1006  
Savannah, Georgia 31421-0206  
(912) 234-1133

David C. Marshall, attorney for Owens-Corning  
One Georgia Center, Suite 2400  
600 West Peachtree Street, NW  
Atlanta, Georgia 30308  
(404) 872-3500

5. Hawkins and Norton v. Baldwin County Board of Education, U.S. District Court, Middle District, Macon Division, Civil Action Nos. 93 349-1 and 350-2. I was sole counsel for the defendant. The cases were tried before Judge Louis Sands. I represented the Baldwin County Board of Education on claims filed against it by two disabled students for various violations of the ADA and Rehabilitation Act. The Judge entered an award for the plaintiffs that required some minor changes to be made at the Baldwin High School and awarded attorney's fees.

Judge Louis Sands  
P.O. Box 1705  
Albany, Georgia 31702  
(229) 430-8553

John A. Draughon, plaintiff's counsel  
Sell & Melton  
P.O. Box 229  
Macon, Georgia 31202-0229  
(478) 746-8521

6. Lockhart v. Little Ocmulgee EMC, Superior Court of Laurens County, Case No. 93V 1473, in Dublin, Georgia. I was lead counsel for the defendant. This case involved a young man who worked for a house mover. He got caught in an electrical wire during the transport of a house over a rural highway. He suffered major electrical burns that caused permanent disability. I defended Little Ocmulgee EMC, a power company that supplies electricity to the rural areas in and around Laurens County. This case was tried by a jury in 1992 and lasted a week. The jury returned a verdict for the plaintiff in the amount of \$1.6 million. Based on objections that I made to the judge's charge, the Georgia Court of Appeals reversed the jury award, and the case was later settled for a substantially lower sum than the jury awarded. (This case is reported at 212 Ga. App. 282 (1994)).

Judge William N. Towson  
P.O. Box 2069  
Dublin, Georgia 31040-2069  
(478) 272-4131

David M. Zacks, plaintiff's counsel  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309-4530  
(404) 815-6500

7. Grace Cartwright v. Hector Piza and A.K. Nagendra, Superior Court of Baldwin County, Civil Action Nos. 86 CV 22888 and 86 CV 22889. I was sole counsel for A. K. Nagendra, an urologist, in a medical malpractice action. The case was tried to a jury for a week. At the conclusion of the trial the jury returned a verdict in favor of the plaintiff against the co-defendant but not against Dr. Nagendra, my client.

This case is significant because the plaintiff's attorney was Jim Butler, one of the top ten plaintiff's attorneys in the country, and his expert witness against my client was the chief of surgery for Yale Medical School.

Judge William A. Pryor, Jr.  
Baldwin County Superior Court  
P.O. Box 728  
Madison, Georgia 30650  
(706) 342-0672

Jim Butler, plaintiff's counsel  
P.O. Box 2766  
Columbus, Georgia 31902  
(706) 322-1990

Joe Chambliss, co-defendant's attorney  
P.O. Box 246  
Macon, Georgia 31202-0246  
(478) 745-1181

Charles Mathis, co-defendant's attorney  
1400 Equitable Building  
100 Peachtree Street, NW  
Atlanta, Georgia 30303  
(404) 523-5000

8. State vs. Louis French, Fulton Superior Court in Atlanta, Georgia. In the spring of 1976, I defended the accused in a jury trial. Louis French was charged with murder as a conspirator and the mastermind of a home invasion robbery that resulted in the murder of a wealthy Atlanta woman. The State was seeking the electric chair for my client. I was lead counsel and was assisted by my former law partner, Pierre Howard, Jr. The jury returned a verdict for the defendant.

Pierre Howard, Jr.  
2843 Dover Road, NW  
Atlanta, Georgia 30327  
(770) 432-2763

9. State v. Dwellie Hill, et al., Superior Court of Richmond County, Augusta, Georgia. While working as Assistant District Attorney in the District Attorney's Office in Richmond County, I prosecuted many armed robbery cases. Over the course of several months, a rash of armed robberies occurred in Augusta involving a gang of criminals, wearing ski masks and carrying guns, who robbed several businesses, including a pizza parlor. The gang went in, robbed the restaurant and employees, and then robbed the customers, stripping them of their money and jewelry. In 1975, I prosecuted the gang on at least two occasions for different armed robberies and got multiple convictions. All defendants had extensive criminal records for violent crimes. The District Attorney at the time was Richard Allen.

Richard Allen  
440 Green Street  
Augusta, Georgia 30901-1691  
(706) 724-4466

Hinton Pierce, defendants' counsel  
3544 Gleneagles Drive  
Augusta, Georgia 30907  
(706) 860-0259

10. In the summer of 1973, while working as an Intern District Attorney under the Second Year Practice Act for the Chatham County District Attorney's Office, I was lead counsel in a murder case tried in Chatham Superior Court. Mr. Andrew Ryan was the District Attorney at the time. He is now deceased. I believe that either former Assistant District Attorney Harvey Weitz, or former Assistant District Attorney Grayson Lane sat with me in the trial of that case. Reginald "Bubba" Haupt was the defense attorney. His license to practice has been revoked.

Harvey Weitz, former ADA  
P.O. Box 10105  
Savannah, GA 31412-0305  
(912) 233-2251

Grayson Lane, former ADA  
P.O. Box 1891  
Brunswick, Georgia 31520  
(912) 264-6406

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As these responses demonstrate, I have had considerable experience in many areas of the law with increasing involvement in federal court on federal questions in the past decade.

I defended approximately 80 asbestos cases filed in federal court in Atlanta and Savannah. Each case involved multiple defendants, and it was a rare opportunity to be involved in complex litigation with multiple cases and multiple defendants per case and see how federal judges manage mass litigation that overwhelms the system simply because of the number of cases. As part of this I attended many hearings on procedural matters, evidentiary matters, and summary judgments. I worked on these cases with Drew Hill and Richard Hines. As stated above, Richard Middleton was the primary plaintiff's lawyer in these cases.

Drew Hill  
P.O. Box 832  
Athens, Georgia 30603  
(706) 354-4000

Richard Hines  
Suite 1400, 999 Peachtree Street, NE  
Atlanta, Georgia 30357  
(404) 817-6000

The most recent addition to my practice is alternative dispute resolution as a neutral. This has become a significant part of my practice and an area that I enjoy very much and find very rewarding. I have developed excellent mediation skills and have learned how to deal fairly with both plaintiffs and defendants. I have also served as an arbitrator.

One of the most enjoyable legal activities I have had and what I think is one of the two main contributions I have made to the Georgia Bar involves my participation at the University of Georgia School of Law as an adjunct instructor teaching a medical malpractice seminar class. I started this class in 1989. The class is very popular with the students, and at one point I had 139 students and had to ask the Associate Dean to restrict the class to 80 students.

Finally, the achievement I am most proud of is the co-authorship of the Handbook on Georgia Medical Malpractice Law. The book has been well received by both the plaintiffs' and defendants' bar. The publication of this book was the high point of my long efforts to educate both students and practitioners about the law of Georgia.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I know of no future benefits from previous business relationships, professional services, firm memberships, former employers, clients, or customers. I do not expect to get any compensation in the future for any financial or business interest, including Jones, Cork and Miller. When I leave the law firm, I will only receive the amount in my capital account.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

All federal judges in the Middle District of Georgia are required to follow the "Code of Conduct for Judicial Officers." This code covers in detail how conflicts of interest should be handled by district court judges. I will follow the code to resolve any conflict issues. I do not know of any categories of litigation or financial arrangements that are likely to present conflicts of interest that would not be covered by this code.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends,

interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See the attached financial disclosure.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See the attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Most of the dates given in this section are estimates of when I worked in campaigns for various candidates:

Campaign Chairman for Rob Danner who ran for state house seat 105 in Bibb County, Georgia in 1985. I organized and assisted Mr. Danner in his campaign.

Campaign committee for Ed Bond for Coroner of Bibb County, 1986. I assisted in the management of his campaign.

Campaign committee for Senator Mack Mattingly, 1987. I helped with the organization of his campaign and held a fundraiser for him.

Campaign Chairman for the Bush/Quayle campaign in Macon, Bibb County, Georgia in 1987. I was the county coordinator for the Bush/Quayle organization in Macon. I ran the campaign office, organized telephone banks and grass roots efforts to get out the vote for the presidential election.

Committee member for the Bush/Quayle campaign, 1991, in Bibb County. I assisted in the management of the local campaign.

Campaign committee in Bibb County for Johnny Isackson for Governor, 1994. I helped raise money and grass roots voting efforts.

Campaign committee for Paul Coverdell in 1993 and 1997. I was one of four original supporters of Senator Coverdell in



Bibb County. I assisted in his local campaign effort to raise money and votes.

Bibb County surrogate for Paul Coverdell working with the Atlanta office, 1997 to 2000. I attended functions for Senator Coverdell as his representative in Macon when he could not be available. I attended meetings with him when he came to Bibb County.

Campaign committee for Barbara Knight for the Macon Water Authority Board, 2000. I helped her in grass roots voting efforts.

I had no formal position with the George W. Bush campaign in 2000, but I worked on a grass roots basis in Bibb County, especially during the primary season.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	4,383	Notes payable to banks-secured	
U.S. Government securities-add schedule	995,342	Notes payable to banks-unsecured	12,008
Listed securities-add schedule	160,000	Notes payable to relatives	0
Unlisted securities--add schedule		Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	0
Doubtful	0	Real estate mortgages payable-add schedule	0
Real estate owned-add schedule RESIDENCE	260,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	0
Autos and other personal property	120,000		
Cash value-life insurance	56,137		
Other assets itemize:			
IRA	390		
Children's Holdings	11,829		
Spouse's Holdings	17,983	Total liabilities	12,008
		Net Worth	1,614,056
Total Assets	1,626,064	Total liabilities and net worth	1,626,064
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	0	Are any assets pledged? (Add schedule)	NO
On leases or contracts	0	Are you defendant in any suits or legal actions?	NO
Legal Claims	0	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	0		
Other special debt	0		

## SCHEDULE 1

## LISTED SECURITIES

Global Crossing Ltd.	\$1,687.05
Aviron	\$38,175.00
Cisco Systems	\$11,480.00
Corning Inc.	\$4,435.00
Corvis Corporation	\$1,470.00
Crown Castle International	\$9,400.00
Curis Inc.	\$28,000.00
Digital Lightwave Inc.	\$4,510.00
Globespan Inc.	\$4,140.00
Imclone Systems	\$598,400.00
Immunogen Inc.	\$82,000.00
Isis Pharmaceuticals	\$136,125.00
Jds Uniphase Corp.	\$3,130.00
Lsi Logic Corp.	\$5,595.00
Ligand Pharmaceuticals Inc.	\$28,530.00
Maxim Pharmaceuticals Inc.	\$20,250.00
Nextpath Technologies Inc.	\$30.00
Redback Networks Inc.	\$600.00
Sandisk Corp. Com.	\$9,420.00
Terayon Communication Sys.	\$6,850.00
Transwitch Corp.	\$1,115.00
Total	<u>\$995,342.05</u>

988

SCHEDULE 2

UNLISTED SECURITIES

Metamorphix	\$150,000
Polywad, Inc.	<u>\$10,000</u>
Total	\$160,000

SCHEDULE 3

REAL ESTATE

The only real estate I own is my personal residence in Macon, Georgia.

FINANCIAL DISCLOSURE REPORT Nomination Report			Report required by the Ethics in Government Act of 1978, as amended (1 U.S.C. App. 4, Sec. 101-112)
1. Person Reporting (Last name, first, middle initial) ROYAL, CHARLES A.	2. Court or Organization MIDDLE DISTRICT OF GA. NAON	3. Date of Report 10/10/2001	
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) DISTRICT COURT JUDGE (NOMINEE)	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 10/09/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 10/03/2001	
7. Chambers or Office Address JONES, CORE & MILLER, LLP PO BOX 6437 NAON, GA 31208-6437		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

## I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 PARTNER	JONES, CORE & MILLER, LLP
2 PRESIDENT	CENTRAL GEORGIA OPERA GUILD
3 EXECUTOR	ESTATE OF MOTHER

## II. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

## III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	PARTNERSHIP INCOME---JONES, CORE & MILLER, LLP	\$175,949
2 2000	PARTNERSHIP INCOME---JONES, CORE & MILLER, LLP	\$175,644
3 Present	PARTNERSHIP PAYMENT---JONES, CORE, & MILLER	\$122,441
4 99-pres.	Teacher - First Presbyterian Day School/Covenant Academy	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	ROYAL, CHARLES A.	10/10/2021

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE	DESCRIPTION
	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1	EXEMPT		
2			
3			

**VI. LIABILITIES**

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1	SUNTRUST BANK	UNSECURED DEBT	J
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting ROYAL, CHARLES A.		Date of Report 10/10/2001	
<b>VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period		D. Transactions during reporting period	
Place "Q" after each asset exempt from prior disclosure.	(1) Amount (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value (J-P)	(2) Value (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value (J-P)	(4) Gain (Code (A-H))	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)					
1 Mother's Estate SunTrust Bank	A	Interest	J	T	
2 Global Crossing		None	J	T	
3 Avison		None	K	T	
4 Cisco		None	J	T	
5 Corning		None	J	T	
6 Corvis		None	J	T	
7 Curia		None	K	T	
8 Digital Lightwave		None	J	T	
9 Globespan		None	J	T	
10 Imclone		None	O	T	
11 Immunogen		None	L	T	
12 Isis		None	M	T	
13 JDS		None	J	T	
14 LSI		None	J	T	
15 Ligand		None	K	T	
16 Nextpath		None	J	T	
17 Redback		None	J	T	
<b>Footnote Codes:</b> 1 Net Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 I2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting ROYAL, CHARLES A.		Date of Report 10/10/2001				
<b>VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>								
A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period	D. Transactions during reporting period					
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value (J-P)	(2) Value Method (e.g., buy, sell, partial sale, merger, redemption) (Q-W)	If not exempt from disclosure			
					(2) Date: Month- Day	(3) Value (J-P)	(4) Gain (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)								
18 Bank of America	A	Dividend	J	T				
19 Sandisk		None	J	T				
20 Terayon		None	J	T				
21 Transwitch		None	J	T				
22 IRA: Global Crossing		None	J	T				
23 Northwestern Mutual Life	B	Dividend	L	T				
24 SunTrust Reserve Fund	A	Interest	J	T				
25 Metamorphix		None	H	U				
26 Polyvad		None	J	U				
27 Fidelity Blue Chip Mutual Fund		None	J	T				
28 American Century Gift Trust	A	Dividend	J	T				
29 American Century Gift Trust	A	Dividend	J	T				
30 Solomon Smith Barney Government Fund	A	Dividend	J	T				
31 Southern Co.	A	Dividend	J	T				
32 American Independent Property	A	Dividend	J	T				
33 First Tennessee National	A	Dividend	J	T				
34 IRT Property	A	Dividend	J	T				
1 Net Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated								



FINANCIAL DISCLOSURE REPORT		Name of Person Reporting ROYAL, CHARLES A.		Date of Report 10/10/2001	
<b>VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
Place "X" after each asset exempt from prior disclosure.	(1) Amount	(2) Type	(1) Value	(2) Value	(1) Type
	Code (A-H)	(e.g., dividend, rent or interest)	Code (J-P)	Method (Q-W)	(e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value/Gain (4) Identity of (5) Month Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
35 Mirant Corp.	A	Dividend	J	T	
36 Shaman Pharmaceutical		None	J	T	
37					
38					
39					
40					
41					
42					
43					
44					
45					
46					
47					
48					
49					
50					
51					
1 Inc./Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. D1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

Name of Person Reporting		Date of Report
FINANCIAL DISCLOSURE REPORT ROYAL, CHARLES A.		10/10/2001

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

*(Indicate part of report.)*

PART 2: Date re: 10/3/0, cntd ...1

Name of Person Reporting	Date of Report
FINANCIAL DISCLOSURE REPORT ROYAL, CHARLES A.	10/10/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

Charles Avery Royal

Date

10/10/01

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

From June of 1976 to March of 1977, I worked full-time as the Public Defender for the Brunswick Judicial Circuit. This work was done exclusively for the disadvantaged. In 1998 I organized and led a group to Merida, Mexico, to help build a family life center for the disadvantaged. In 1999 I organized and led another group to Ciudad Victoria, Mexico, to build a school. In September I went to Odessa, Ukraine to help restore an old church, which is a Ukrainian national monument. Part of the cost of these trips pays for supplies to be used at the worksite. These trips were taken during my vacation time.

I have also involved two of my sons in AAU basketball teams in Macon. The teams were made up almost completely of disadvantaged African-American youth. I attend many of the practices and have helped out financially in the past.

I also serve on the Institutional Review Board (IRB) at the Medical Center of Central Georgia in Macon. This Board reviews and approves the use of experimental treatments for patients.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization, which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not belong and have not belonged to any such organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A panel of state Republicans interviewed all persons interested in the position for the federal judgeship in the Middle District of Georgia. I submitted my name to Congressman Saxby Chambliss who referred my name to that panel along with a copy of my resume, and I filed a form with the Bush transition team website. The committee interviewed me along with all other potential candidates, and my name was placed on a short list of three persons for the position. Members of the White House counsel staff subsequently interviewed me in the White House. Members of Senator Cleland's staff in Atlanta then interviewed me. Most recently I have been interviewed by FBI agents and attorneys from the Department of Justice.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

Not Applicable.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The genius and longevity of our constitution derives from certain basic concepts such as checks and balances, separation of powers, limited government and principals of federalism. These concepts lead to a balance of power between the federal government and the state governments and a balance between the executive, legislative and judicial branches of the federal government. The assignment of roles within the three branches of the federal government promotes an orderly system for the legislation, execution and adjudication of federal law.

The role of the district court judge is limited in the grand scheme of government. District court judges work day-by-day on a case-by-case basis. This results in a very practical approach to handling individual cases.

The court should first assess the pleadings to determine if the court has jurisdiction over the parties and subject matter and then determine if venue is proper. The court should also consider Article III requirements such as the issue of plaintiff's standing to bring the claim. Has plaintiff suffered an injury in fact - an invasion of a legally protected interest that is concrete and particularized, as opposed to merely speculative? Has plaintiff shown sufficient causal connection between the alleged injury and the alleged acts of the defendant? Can the court redress the injury by a favorable decision? Unless these questions are answered in plaintiff's favor, the court cannot hear the claim.

The court should also consider the issue of ripeness and mootness. A case is not ripe unless the claim is sufficiently mature and the issues raised are sufficiently defined to permit decision-making by the court. In other words, has injury in fact occurred? The court should avoid a premature adjudication and involvement in abstract disagreements. Likewise, a case that is moot cannot be characterized as an active case or controversy. It is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome; consequently, the court cannot give meaningful relief.

In deciding these preliminary issues, as well as all other legal issues, the court should follow precedent set by the appellate courts and applicable rules, such as the Federal Rules of Evidence and the Federal Rules of Civil Procedure. It is common to think about the law as protecting the rights of the parties; however, through my experience as an arbitrator, I have learned that the law also protects judges in the decision-making process. It provides the guideposts that lead judges in their decision-making process and should be carefully followed in the adjudication of all claims.

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AFFIDAVIT

I, Charles Ashley Royal, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10/9/01  
(DATE)

Charles Ashley Royal  
(NAME)

Patt Martin  


Senator DURBIN. Thank you very much.

Mr. ROYAL. Thank you.

Senator DURBIN. The fact that none of you have an opening statement reminds me of an early admonition in law school that if you are ahead, do not mess it up—

[Laughter.]

Senator DURBIN. —or something along those lines, and I think that you can take some comfort from the opening statements of all of my colleagues and members of the Committee of how positive we view your credentials and your nomination for the Federal District Court.

Many years ago, before I was in this job, or before I was in the House, I was a practicing attorney and I came to appreciate great legal acumen and legal skills, but appreciated even more the appropriate temperament for a judge. The position that you are seeking is a lifetime appointment, and as a consequence, if you are good, we will get to see that goodness for a long time, and if you are not, we will also see that.

It is very tough to be a self-critic, but I would like if each of you would be kind enough to say a few words for the record, under oath, about judicial temperament and what you think makes a good judge in that respect. Ms. Granade?

Ms. GRANADE. Mr. Chairman, I believe that a good judicial temperament is one in which a judge is even-handed, has civility and respect for the lawyers that practice in front of him or her, one who engenders respect him or herself by the way he or she comports themselves on the bench. I think that it is most important for the court to engender respect and an even, solid, level-headed temperament is probably the best way to do that.

Senator DURBIN. Thank you. Ms. Krieger?



Judge KRIEGER. Thank you, Mr. Chairman. My view of judicial temperament is that a judge has to inspire trust in the system, and in order to do that, a judge must be prepared, impartial, respectful of the parties. It is sometimes tempting to think that the courtroom in which you serve is your courtroom, but it is not. It is the people's courtroom. And ultimately and most importantly, the judge should endeavor to be consistent and respectful of all those people who come to that courtroom.

Senator DURBIN. Thank you, Mr. Mahan?

Judge MAHAN. Thank you, Mr. Chairman. I am a sitting judge now, as you know, in State Court, and I think temperament is very important, how a judge reaches his or her decisions and how he or she treats people in the courtroom. So I think a judge has to be, first of all, prepared for whatever hearings are going on at that particular time and courteous, professional, treat all of the litigants and the parties with the utmost respect to which they are entitled, and again, I cannot stress how important I think judicial temperament is.

Senator DURBIN. Thank you, Mr. Martinez?

Judge MARTINEZ. Mr. Chairman, I think the judge sets the tone in his or her courtroom, and I think to that extent it is important for the judge to be even-handed and open-minded about the nature of the evidence that is going to be presented and thoughtful in the process. The adversarial system may be one in which it can be contentious at times, but I think there can be disagreement without ever reaching the point of being disagreeable, and I think the manner in which the judge conducts the business of the court is oftentimes reflected by the attorneys and the parties in the court. It is an uncomfortable arena for most individuals who do not have occasion to be there on a daily basis and the judge can do much in ways to disarm any apprehensions a party or a litigant may have being in the courtroom.

Senator DURBIN. Thank you, Mr. Royal?

Mr. ROYAL. So much of what I have already heard has been excellent and I agree with all that. As part of the investigations that were done on me, I was asked a question, what kind of judge do you want to be, and I said I want to be a quiet judge, and I said that because I think judges often get themselves in trouble by saying too much, and so I think it is important to exercise self-control from the bench. I think it is also very important for the litigants to understand that they are getting a fair trial and that the judge is open-minded. I think those are really essential.

Senator DURBIN. I think that admonition for quietude could be shared with some members of the Senate and House, too.

[Laughter.]

Senator DURBIN. We err on the other side of that once in a while.

In America, we pride ourselves on a Constitution which preserves the rights of individuals and protects them from the overreach of government. The courts really play a critical role in maintaining that appropriate balance. It is a difficult balance to maintain in time of peace, that balance between civil liberties and national security, when the government says there are things that we have to do to protect and defend this nation and others challenge

them as perhaps assaulting some of the core values and liberties guaranteed by the Constitution.

In our history, there have been some examples where there have been excesses, and in time, we have come to realize the Japanese internment camps went too far in taking ordinary law-abiding Americans, and because of their ethnic ancestry, literally interning or imprisoning them for long periods of time.

I would like to have your thoughts on that particular issue. Now that we are facing a war against terrorism, a very real attack against the United States, this debate will rage on, and if you are fortunate enough to be confirmed, may come to your courtroom, and I would like your thoughts about that appropriate role of the government, the rights under the Constitution, and the role of the judge. Mr. Royal, would you start?

Mr. ROYAL. Well, I think that we are at a time when national security is a great issue and we are at a time when it is a very grave matter, implementing safety in this country. I think that it is very important that we understand that it is times like these when there can be problems by overlooking the rights that you mentioned in the Constitution, neglecting those rights, and I think that it is very important that that not happen, that we maintain a good balance between seeking out efforts, devising ways to protect our country within the realm of what is constitutional.

Senator DURBIN. Mr. Martinez?

Judge MARTINEZ. Mr. Chairman, I agree with my fellow nominee. I think that it is certainly important to realize that the rights afforded to each of us are personal rights, and certainly the 14th Amendment guarantees to us that no person should be in any way deprived of equal protection of the laws. I think it is an important balancing act.

It certainly is an appropriate arena for the Senate Judiciary to make inquiry of with respect to the issues that will affect all Americans and I think it would be inappropriate, however, to ask how a judge would handle a particular case that may come before that judge, given the fact that we must approach that with an open mind, listening thoughtfully to the evidence and making a decision based upon the facts and the law, which I certainly will follow.

Senator DURBIN. Thank you. Mr. Mahan?

Judge MAHAN. Thank you, Mr. Chairman. I think that you yourself struck the appropriate note when you said balance, because it is a balance. It is a balance between—obviously, the government is concerned about the safety of its citizens and it should be concerned about that. But all of us have to be concerned, and particularly we members of the judiciary have to be concerned about the civil liberties.

And so I think, as Judge Martinez said, it is an appropriate subject for the Committee and the Congress to look at and to consider, but it is something that we need to be very mindful of. In the rush to safety, we cannot overlook the constitutional liberties that we all enjoy and that are the basis for our freedoms in this country.

Senator DURBIN. Thank you. Ms. Krieger?

Judge KRIEGER. Thank you, Mr. Chairman. I agree with all the comments that have been made and I would only add that security and liberty are the flip sides on the same coin. If we did not have

civil liberties, there would be nothing to keep secure, and indeed, it is the preservation of those civil liberties that prompt us towards security.

Keeping a balance between those is difficult. It is a matter of policy. It is a matter of the people's will through their elected representatives, the Congress. Ultimately, we may face an issue, any one of us, that is brought before the courts, and in that event, we will have to decide the issue on the merits with the presumption that any enactment is constitutional.

Senator DURBIN. Thank you. Ms. Granade?

Ms. GRANADE. Mr. Chairman, I think that this is one of the great public policy issues that Congress is currently having to grapple with and that it is the most appropriate subject for Congress to address initially.

I do believe that once Congress has spoken on all of these issues, it is up to the judiciary at that point to respect any bright lines drawn by Congress in that regard, unless and until it flies in the face of the Constitution, and that is where the judiciary comes in. But with all due deference and respect to those Congressional decisions, I think that is where the real battle will lie.

Senator DURBIN. Thank you.

Senator SESSIONS, would you like to ask?

Senator SESSIONS. Yes, thank you. I congratulate each of you. From what we have seen, and your backgrounds have been reviewed very carefully with the people who nominated you and submitted your name for nomination, by the White House and the President, by the ABA, by the Congress now, the Senate, this Committee, on both sides of the isle, so I think it is something that you should take great pride in, that your nominations are moving forward and things look very good for each of you. I know each of you will make a great judge.

I would mention one thing, and Ms. Granade, I will start with you. Tell me your thoughts on the rule of law and the importance of maintaining a consistent rule of law in America.

Ms. GRANADE. As I have heard Judge Hand say time after time after time, this is a nation of laws and not of men, and the rule of law is prime in our system of jurisprudence. That is what makes stare decisis such an important factor in how any judge goes about the business of being a judge. I think that as long as judges follow the rule of law and do not become a law unto themselves, they will make a fine judge, and that is what I intend to do should I be so fortunate as to be confirmed.

Senator SESSIONS. Thank you. Ms. Krieger?

Judge KRIEGER. The rule of law is the basis of what this country is built upon. It is what holds us together as a society. We come together with differing religions, differing ethnic backgrounds, differing ages, different cultural practices, but it is our fundamental belief in the rule of law that holds us together and it is the judge's duty to serve the rule of law.

Senator SESSIONS. Mr. Mahan?

Judge MAHAN. Thank you, Senator Sessions. I think the uniformity and the consistency of the law are very important to this country, that we do not have differing decisions depending on what part of the country you are from or perhaps from your background,

but we have judges who are committed to the rule of law and to the precedents that have already been established. I think it is important that we all know where we stand, and the rule of law is something that is certain, that all of our citizens can count on, and I think it is very important. It is a vital part of our society.

Judge MARTINEZ. Senator, thank you very much for the question. I agree with what my fellow nominees have said. We are a nation of laws. I think it is important to remember the judges do not, or should not, allow their personal opinions or political beliefs to in any way influence any decision which is made. The decisions, certainly for a Federal District Court Judge, ought to be guided by interpretations by the Circuit Court in which he or she resides or lives and certainly by the United States Supreme Court, and that is a commitment that I would make, to follow the law as interpreted by the higher courts.

Senator SESSIONS. Mr. Royal?

Mr. ROYAL. Well, I think that is a very important question, Senator, and I believe that the rule of law really provides the infrastructure for any viable society, without which a society cannot last very long because it will turn to anarchy. I think it is very important as a part of that to apply the rule of stare decisis, which I am committed to do, and follow the various precedents of the courts. When you do not do that, then everything becomes a matter of subjectivity and it becomes quite dangerous.

Senator SESSIONS. I would agree very much. You know, on the Supreme Court building are the words, "Equal Justice Under Law," and we cannot have justice or equal justice if we do not have a good rule of law. I am convinced, as I have grown older and seen more things, that our economic strength and our political liberties are a direct result of the fact that we have one of the finest legal systems the world has ever known and that many fine and decent countries filled with fine and decent people that are struggling so terribly economically and otherwise is a direct result of not having a good legal system in which people can invest, plan, have confidence, safety, security, and all those things. I do not think we spend enough time celebrating the unique wonder of the American legal system.

Ms. GRANADE, let me ask you one thing. You are going to be trying, at some point—criminal cases, unrelated to those that were in your office when you were there. Do you think you can give defendants a fair trial after all these years of prosecuting and be able to control those prosecutors that come before you?

Ms. GRANADE. Senator, I believe that I can. I think that in the last ten years since I have been in a supervisory position in the U.S. Attorney's office, I have practiced seeing the other side of cases a lot. I have practiced testing the Assistant U.S. Attorneys in the office on what I see as the defense side of the case. So I think in the criminal realm, I have come to understand both sides. The best way to test your own case is to know the other side. And so I have confidence that I have the ability to do that.

Senator SESSIONS. I do, too. I do not have any doubt of that. I would say that your success record in prosecution is in large part due to the fact that you did not bring bad cases. You knew how to evaluate a case from the beginning, which is a good thing to do.

Let me ask each of you others, I do not know what your prosecutorial experience is, but in Federal Court, a prosecutor is at the mercy, to a large degree, of the Federal Judge. A defendant can appeal any adverse ruling against the prosecutor, but the prosecutor cannot appeal adverse rulings against the government. I guess I would like to ask you, do you understand the seriousness of that? It has been said certain judges would rule for the defense because that way they could never be reversed. You have heard that statement.

So I guess I would ask you, will you do your best to give the government's case in a criminal case the same fairness that you would give to the defense case? Ms. Krieger?

Judge KRIEGER. I will, sir.

Senator SESSIONS. Mr. Mahan?

Judge MAHAN. And Senator Sessions, I certainly will. As a sitting judge now, it is one of the proudest moments or achievements at the conclusion of a case when I have the attorneys, both sides, say to me, you were fair. I really—I consider that the highest compliment that a judge can receive and I really treasure those, so you have my assurance that I will be fair to both sides, regardless of whatever case it is.

Senator SESSIONS. Mr. Martinez?

Judge MARTINEZ. Senator, it sounds like the rules relative to appealing cases from the State side is similar in the Federal system as it is in the State of Texas, and I have committed to do so, and having served as a District Court Judge for nearly a decade, or just over a decade, I would continue to do so and commit to you, sir.

Mr. ROYAL. I have prosecuted a number of cases, so I am quite familiar with the rule that you just mentioned. However, I have also served as defense counsel for many criminal defendants, so I have a very good and balanced view of both sides of that. Certainly, I understand the deference required, the necessity of giving a fair trial to both sides, and I am certainly obligated to do that.

Senator SESSIONS. Good. Mr. Chairman, you know, one of the most significant unreviewable powers in America is at the conclusion of the prosecution's case, a Federal Judge can order a judgment of acquittal no matter what the evidence is and there is no appeal whatsoever, even though the person may have been a murderer, a bank robber, a big-time drug dealer, and we seldom have a problem with that. It is amazing how little problems there are, but there have been instances in which that has been reviewed. That is the reason I ask that.

I thank each of you for being here and for your commitment to public service, and I know each of you are going to find this is a difficult job managerially and the caseloads will be difficult and certainly not a position in which you can relax. It is going to take a lot of work and I hope that you are all committed to that. Thank you.

Senator DURBIN. Thank you, Senator Sessions.

Ms. Granade, there has been a lot of discussion in this Committee for a long time about the theory of strict construction of the Constitution and admonitions of judicial restraint come from members of this Committee to virtually every nominee for the Federal bench.

You have an interesting family heritage. It is my understanding that your grandfather, Judge Richard Rives, played an historic role as one of the four judges of the old Fifth Circuit who helped to desegregate the South in the 1950s and the 1960s. The role he played in the face of overwhelming popular resistance involved a great deal of courage and judicial oversight and, some may say, beyond the strict construction interpretation of the Constitution, where he felt that he had a responsibility to do things which, or to view laws in a way that had not been addressed before.

As you reflect on his contribution which he has made to the country, to our nation, how do you reconcile that in terms of strict construction and judicial restraint?

Ms. GRANADE. Thank you for the question, because it gives me an opportunity to comment on that heritage, and I am very proud of the heritage in my family. Judge Rives, my grandfather, really is my personal hero.

I do not think there is a real conflict there, though, because the issues on which he more or less broke with precedent were ones which really flew in the face of the Constitution, the direct language of the Constitution. So in that sense, he could have been termed a strict constructionist.

I think a judge will always be correct if the decisions that he or she makes are consistent with the plain language of the Constitution, and that is what I feel that my grandfather was doing.

Senator DURBIN. Thank you. Judge Martinez, being a person of Hispanic ancestry, you undoubtedly have seen in your practice and in your service a number of indigent criminal defendants who have been called to court. There have been questions raised by many minorities in this country as to whether or not they have a fair shake under our system, competent counsel, and whether, in fact, their rights and liberties are being protected in our system of justice. What is your thought on that observation?

Judge MARTINEZ. Mr. Chairman, thank you for the question. I think it is absolutely essential that the right to counsel be the right to effective and meaningful counsel. In my own personal situation, one of the reasons that we have made use of the public defender system within the juvenile system which I have overseen over the course of the last decade is because of the quality of the representation that is afforded to the delinquents, the individuals who are charged with differing crimes.

I think, given the precious liberties that we enjoy as American citizens, the importance of safeguarding those liberties, the only way to do so is to provide effective counsel to those who are charged with crimes which could result in the deprivation of their life, liberty, or property, and I would surely support the effort of the public defenders in the Federal system and appoint lawyers who are competent to represent these defendants.

Senator DURBIN. Thank you. Mr. Royal, you bring a background which is somewhat unique to this nomination. It is my understanding that in the course of your practice, you successfully defended a defendant who faced a death penalty.

Mr. ROYAL. That is correct.

Senator DURBIN. There has been a great debate across this nation about the death penalty. In my State, the Republican Gov-

error, to the surprise of many, suspended the death penalty because of case after case on death row which were shown to have been decided incorrectly. Some 12 or 13 men were released from death row in Illinois after DNA evidence and other evidence made it clear to all of the prosecutors that they could not have possibly committed the crime for which they had been found guilty and to which they had been sentenced to death.

What is your perspective on that in reference to both competent counsel and DNA evidence and the question of the death penalty?

Mr. ROYAL. Well, I recall from my case, and it was tried over 20 years ago, that I felt a great burden in defending a man who the State sought to execute, and I believe that in any such circumstance, there has to be a heightened awareness, a heightened vigilance about all aspects of the trial where the death penalty is actually being conducted, and I think it is very important for the judge sitting in the trial of that case to go beyond the usual steps to ensure that the case is tried fairly, that all the constitutional rules are applied, and that mistakes are not made.

Now, I am not familiar with the DNA testing and I do not have any particular insight into that, so it is hard for me to comment on that. But I think that the death penalty has very serious implications and needs to be dealt with very delicately.

Senator DURBIN. Thank you. Ms. Krieger, your background has been in bankruptcy law, to some extent, but you as a Federal Judge will face a lot of criminal cases in a hurry. I think that is a major part of the docket for most Federal District Court Judges, because of the speedy trial requirements and the like.

One of the issues that has been debated here in Washington and across the nation is the whole question of racial profiling, and virtually every elected official has condemned this practice, as they should. When it comes down to the administration of justice in America, there are some statistics which I have brought up many times in this room to nominees for Attorney General and for judicial posts which cause me great pain and pause, which are these African Americans that represent 12 percent of the United States population. We are told by the experts they commit 11 percent of the drug crimes, and yet 35 percent of those arrested for drug crimes are African Americans, 53 percent of those convicted in State Courts are African Americans, and 58 percent of those incarcerated in State prison are African Americans.

This disparity between actually committing the crime and being charged, convicted, and incarcerated shows that, at least in some stage in the system here, something is not being handled in a fair and equitable fashion, at least from my conclusion. What is your observation of the role of the judge confronted with this kind of a challenge?

Judge KRIEGER. That is a very important question, not only prior to September 11 but also since September 11. The issue of racial profiling goes right to the heart of the central values that we have in this country, and that is that no one should be discriminated against on the basis of race. The law is settled with regard to that and it is a judge's obligation to apply that law in a fair and consistent manner. It is particularly important when freedom and perhaps someone's life is at stake.

The essence of a criminal matter differs from a civil matter in that in civil matters, we are only talking about property and money, but in a criminal matter, we are talking about personal freedom and we are also talking about the sanctity of life and both of those areas demand a very high attention from the bench in making sure that the process is fair and it upholds the strict requirements of due process.

Senator DURBIN. Thank you. Mr. Mahan, you may be aware of the fact that I represent the State of Illinois. You may not know, but I want to make it a matter of record here, that I am quite a die-hard Chicago Bulls fan.

[Laughter.]

Senator DURBIN. You should know that I took great pride in all of their championships and watched as many games as possible and followed them as closely as I could, and you are probably wondering—maybe you already know where this question is headed.

You recently made a decision to permit television cameras to broadcast the civil trial against Dennis Rodman, former Chicago Bull. This is of particular interest to me not just because I have watched Rodman and his different hair colors on the court for so many years, but also because it raises a question that we are facing as a nation as to television in the courtroom.

Every time I have asked people who want to be prosecutors or judges about the issue of television in the courtroom, without fail, they make reference to the O.J. Simpson trial as evidence of how it can go wrong and how it becomes the focal point of the trial as opposed to the administration of justice. How do you feel that we can strike a balance, or can we strike a balance on a national basis when it comes to this issue?

Judge MAHAN. Thank you, Mr. Chairman. I myself am a Denver Bronco fan, so I know how you feel about the Chicago Bulls, although they are different sports.

In the Dennis Rodman case, it was interesting to me that his counsel was opposed to having the cameras in the courtroom because they felt that it would encourage frivolous lawsuits. I ruled against them and opened the courtroom to the cameras and I told them that I think the opposite is true, that it is important that people see what goes on in the courtroom.

I think too many of our citizens turn on TV and they see, and I will not mention any names, but let me call them pseudo-judges who, frankly, berate people, treat them rudely and with contempt, and they think that is the way a judge should be, and to me, that is horrible. I think it is important that people, that ordinary citizens see that this is the way that judges operate. I mean, they should see real life. This is the way judges operate. It is not the "People's Court" or something else where you go in there and you are subject to being abused.

And so I think the balance, of course, is one that an individual judge must strike, assuming, as in our State, where cameras are permitted in the courtroom subject to what the judge permits, but I would balance those two things. In other words, if it is a kind of a trial that could be reduced to a spectacle, I think you need to be careful. But I think in large part, it depends upon the judge. The judge is to keep order in the courtroom and to run his courtroom



in a reasoned, reasonable fashion, and if the judge does not fulfill that duty, then, unfortunately, the trial degenerates, and that is true of any trial, whether it is being televised or not.

But I look primarily to the trial judge to strike that balance and make sure that the trial is fair and do not get sidetracked by the fact that there are media present.

Senator DURBIN. Thank you.

Senator SESSIONS, do you have any other questions?

Senator SESSIONS. You know, one of the things that I have noticed in the statistics we are seeing is a decline in the number of cases actually going to jury trial. It raises a concept of how justice is being dispensed in Federal Court and the complaints we hear as government officials about delay and cost.

I guess I would like to ask your view about the role of a judge in managing a case, moving it promptly to a justice position, and being involved in that case in terms of you have got a serious motion to dismiss or a motion for summary judgment. How strong do you feel that a judge ought to confront that issue and try to decide it promptly and what are your thoughts about managing your docket generally? Ms. Granade?

Ms. GRANADE. I think it is very important for a judge to manage the docket efficiently but without any cost to due consideration and fairness in the case, and each case is going to have to be judged on its own merit in that regard as to how fast that case can be moved along. I think it is vital, though, for judges to address as soon as practicable within the case any dispositive motions, because the sooner a case can be decided, the quicker justice will be dispensed.

Senator SESSIONS. I get a lot of complaints that serious motions just lie there for months and months and months. Ms. Krieger?

Judge KRIEGER. There is an old maxim, justice delayed is justice denied, and I think that is applicable even in motion practice. It is critical to make sure that every case gets the appropriate slice of the judicial pie at the appropriate point in time, and I believe not only in active case management, in moving cases along and assisting attorneys to move those cases along, but I believe in legal triage, which means that you have to make an assessment when motions come in as to what needs to be heard promptly and what can wait. The old first in, first out rule sometimes leaves cases undecided and motions undecided to the detriment of the parties.

Senator SESSIONS. And you are serving the public. In that sense, I think that is correct.

Mr. Mahan?

Judge MAHAN. Thank you, Senator Sessions. I think that case management is something that is very much a concern of all sitting judges and it is a matter that needs to be addressed continually. I think a mistake that many judges make is they take matters under advisement too often and I think the better practice is to be prepared, hold a hearing, and then whenever possible, just rule from the bench so that people can move, or the litigation can move along. People can get on with their lives.

But your question almost assumes that you have seen situations where that has not happened, and—

Senator SESSIONS. Not in the Federal Court in Mobile, but—

[Laughter.]

Senator SESSIONS. They never delay rulings.

Judge MAHAN. No, no, no, but—

Senator SESSIONS. I have heard it from other areas.

Judge MAHAN. From other—but it is a concern that the judge address any motions that are filed promptly and not simply take matters under advisement and, first of all, not let the motion sit there for months before there is a hearing, but get a hearing promptly and then get a ruling promptly. If it has to be taken under advisement, then the judge should issue a ruling as soon thereafter as possible, because a case is not like wine, where it turns better with age. It is like milk. It turns sour with age. So I am aware of those concerns and I have those concerns, as well, about case management.

Senator SESSIONS. Mr. Martinez?

Judge MARTINEZ. Senator, I agree with what has been said by my fellow nominees. I think there are various procedures that are afforded judges which will allow for the dispositive ruling of cases which do not merit going the full distance. I certainly think the use of the summary judgment rule, either a no evidence summary judgment or an affirmative summary judgment, is something that should be considered.

I agree very much with what Judge Mahan said about taking matters under advisement. We would all love to have the wealth of time in order to make the most informed decision possible, but I think the best trial judges with whom I have been acquainted are those trial judges that decide issues and move it down the process, and occasionally you may make a mistake or two, but there are others available to grade your paper.

Justice delayed is justice denied and I commit to an active role in docket management, as I have done so while a State District Judge in El Paso, and I think the key to docket management, very honestly, I have every case set for something so that nothing falls by the wayside, and that way, every case comes up at one point or another for some kind of consideration and that is what I have found to be effective.

Senator SESSIONS. Mr. Royal?

Mr. ROYAL. Senator, you have really hit on a big issue and really one of the biggest complaints that attorneys have, and even with Federal Courts and State Courts, too, and I will tell you that I have been the victim of that problem many times, where I have had to wait for a year or other situations where I never got a ruling and the parties just had to resolve the case on their own before the court ruled.

Based on my experience with that and knowing what a vexing problem it is, I have already made a commitment to myself that I am going to move forward on these rulings because it is really very important—

Senator SESSIONS. Well, a cause of action. If a cause of action is not a valid cause of action and you really believe it is not valid, it is hard to settle the case if the other side is still saying you owe money under that cause of action. Do you not think it clarifies the issues and allows for settlement to occur more effectively?

Mr. ROYAL. Right. Well, the avenue would be to file a motion to dismiss. We just had a case recently in Macon where we filed a motion to dismiss. We did not think there was a viable claim and the judge promptly entered the order, which worked out very well. And then sometimes we file motions for partial summary judgment to throw out a particular count.

But the reality is if the judge lets that sit and sit and sit, then that obviously requires more legal expenses to be paid and it takes more time and it results in what should have—a lengthy disposition of a case that should have been disposed of much earlier.

Senator SESSIONS. And the expense issue is significant. If a cause of action which may represent half of the litigation is not a valid legal cause of action, you may spend a lot of money on discovery and costs and investigations that would not be necessary.

Mr. Chairman, thank you for raising Ms. Granade's grandfather, Judge Rives, who is definitely one of the great judges on the old Fifth Circuit. It is now split and we are in the 11th Circuit part of that. I think it was a very difficult time for those judges. It was not easy. A huge sea change had to occur, and when the judge ruled that, the 11th Amendment says no State shall deny any individual equal protection under law, he was acting with fidelity to our Constitution.

So I thank you for raising that and I think this is an excellent panel. I think they will do a great job.

Senator DURBIN. Thank you very much, Senator Sessions. I certainly agree with you and I want to thank all of you for coming today and for your testimony and your families and friends for joining you. This will be the end of questioning and you are now free to go. We will leave the record open for one week to allow Committee members to submit written statements and follow-up questions and I ask my colleagues to try to do so earlier rather than later so we can move these nominees along expeditiously. Thank you very much.

Judge MAHAN. Thank you, Mr. Chairman.

Judge MARTINEZ. Thank you, Mr. Chairman.

Mr. ROYAL. Thank you, Mr. Chairman.

Senator DURBIN. I am going to call Mr. Tamargo forward. I have to leave in just a few moments. If our questioning goes on for a while, I may have to ask for a small recess here, but we will try to consider his nomination, give him appropriate questioning, and still meet our other obligations.

Mr. Tamargo, would you please rise and raise your right hand as I administer the oath.

Do you solemnly swear the testimony you are about to give before the Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. TAMARGO. I do.

Senator DURBIN. Thank you. If you would be seated, and if you would like to introduce family and friends who are here today and make an opening statement, you are welcome to.

**STATEMENT OF MAURICIO J. TAMARGO, NOMINEE TO BE  
CHAIR OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES**

Mr. TAMARGO. Thank you, Mr. Chairman. I will be happy to waive my opening statement.

I would like to introduce, though, my wife, Tara, of 16 years, and my two children, Erin and Greg. They are the joy of my life and my solace in this crazy world and also my secret weapon.

And, of course, you know Congresswoman Ros-Lehtinen, and I wanted to thank her and Senator Bob Graham and Senator Warner and Congresswoman Carrie Meek. Their introductions of me were really moving and I wanted to thank them for that. And in the room are many of my friends and colleagues and my coworkers. Thank you.

Senator DURBIN. Thank you very much.

Let me ask you, do you have an opening statement beyond that?

Mr. TAMARGO. I will waive my opening statement. I will submit it for the record.

Senator DURBIN. Thank you very much.

Let me ask you about this Foreign Claims Settlement Commission, and I do not profess to be an expert on this Commission. I have read a little bit about it in preparation for your nomination hearing today. It is not currently administering active claims programs. You have been used to a very different schedule in Congresswoman Ros-Lehtinen's office, I am sure. Tell me how you envision this Commission's role under your leadership and how it might change.

Mr. TAMARGO. I envision, of course, continuing the work that the Commission is doing at this time, which is providing information to interested parties of settled certified claims, and I plan to work with the Congress on pending legislation that might—that is pending that would create new claims programs, and, of course, continue cooperating with the State Department on a technical basis, helping them in any discussions they may be having with other countries over existing claims.

Senator DURBIN. Under a 1998 amendment to the statute governing this Commission's jurisdiction, the Commission was given responsibility for adjudicating any category of claims against a foreign government which is referred to the Commission by the Secretary of State. Are you aware of any plans by the State Department or Secretary of State to refer any categories of claims to the Commission?

Mr. TAMARGO. No, I am not.

Senator DURBIN. And no one in the administration has discussed this issue with you in the context of your nomination?

Mr. TAMARGO. No. No, they have not.

Senator DURBIN. Okay. Let me ask you specifically about the land of your birth, Cuba. As you know, there are many Cuban Americans who lost land or property when Mr. Castro seized power in 1959. Do you know of any efforts to refer claims to the Commission by Cuban Americans who were Cuban nationals at the time of the loss of their property?

Mr. TAMARGO. I am sorry, repeat the question.

Senator DURBIN. Do you know of any efforts to refer claims to this Commission by Cuban Americans who were nationals and lost their property when Mr. Castro came to power?

Mr. TAMARGO. No.

Senator DURBIN. Do you believe that Title III of the Helms-Burton law would permit those who lost property in Cuba to file a Federal lawsuit against companies that traffic in such property?

Mr. TAMARGO. Title III?

Senator DURBIN. Of Helms-Burton.

Mr. TAMARGO. I believe so.

Senator DURBIN. You do? And do you know of any efforts within the administration to implement Title III?

Mr. TAMARGO. I do not.

Senator DURBIN. Okay. Perhaps I am going to send you some written questions. I do not want to put you on the spot, not having the law in front of you and not having some time to reflect on it and I want to make certain that you give us a complete answer based on all of that information. So I am not going to pursue this, but if you would not mind, I will send you a few questions that you might get back to me on.

Mr. TAMARGO. Certainly, Mr. Chairman.

Senator DURBIN. Thank you.

Senator SESSIONS?

Senator SESSIONS. Congratulations, Mr. Tamargo. I congratulate you on having the support of Senator Graham, Senator Warner, and Ms. Ros-Lehtinen. I think that speaks well for you.

I note in your background you are a graduate of Cumberland School of Law—

Mr. TAMARGO. That is right, sir.

Senator SESSIONS. —where I am proud to say my daughter is Student Bar President right now. It is an excellent law school and I am proud to see that you attended there.

Do you have any thoughts as you go into this job about what you would like to accomplish and how you would like to conduct the job?

Mr. TAMARGO. Yes, sir. I hope to be a strong advocate for Americans who have had their properties confiscated, provided that they show to the Commission, to the satisfaction of the Commission, their claim is just, and I hope to help them protect that right overseas. To me, property rights is an important right in this country and I think it is important for Americans to have the protection of their government if they own property overseas in other countries.

Senator SESSIONS. Okay.

Senator DURBIN. Thank you, and I will submit some written questions to you.

[The biographical information of Mr. Tamargo follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Mauricio J. Tamargo
2. Address: List current place of residence and office address(es).  
Home: Burke, Virginia  
Office: 2160 Rayburn House Office Bldg, Washington, DC 20515
3. Date and place of birth.  
Oct. 22, 1957; Havana, Cuba.
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Tara M. Tamargo, Maiden name Tara M. Gioia, Teacher; English Speakers of Other Languages (ESOL) teacher, Fairfax County Public Schools, Hunt Valley Elementary School, 7107 Sydenstriker Rd. Springfield, VA 22152
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Miami Dade Community Collage, 1976-78, No Degree,  
University of Miami, 1979-85, B.A. Degree in 1985.  
Cumberland School of Law, Samford University, 1986-89,  
J.D. Degree in 1989
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
1983-86, Florida State Representative Ileana Ros-Lehtinen,  
Administrative Assistant  
1988-89, Cumberland School of Law, Law Library,  
Book Circulation Student Worker  
Summer 1988, National Labor Relations Board,  
Summer Law Clerk  
1989, 1990 & 1992, Ros-Lehtinen for Congress  
Deputy Campaign Coordinator  
1989-Present, Congresswoman Ileana Ros-Lehtinen  
Legislative Director, Press Secretary, Administrative

Assistant, Chief of Staff  
 1995&1996&1997, GETM, Inc., (Spouse's mail-handling business).  
 Mail Handler, Computer Technician  
 1994-96, Subcommittee on Africa, House Intl. Relations Com.  
 Staff Director  
 1996-00, Subcommittee on Intl. Economic Policy and Trade, HIRC  
 Staff Director  
 2000-Present, Subcommittee on Human Rights and Intl.  
 Operations, HIRC  
 Staff Director

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.  
 No military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Dean's List, Cumberland School of Law  
 Finalist Gordon T. Saad Appellate Advocacy Competition  
 Phi Alpha Delta, Legal Fraternity

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Active dues paying member of the following Bars;

Florida Bar,  
 District of Columbia Bar  
 Supreme Court Bar

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

By virtue of my wife and I owning our house, we are members of our homeowners association, (bylaws and covenants are attached). By virtue of our contributions, I am probably a member of the following organizations; Childrens Wish Foundation, FSU-Foundation, Vietnam Vets of Virginia, American Heart Associations, American Red Cross, National Rifle Association, U of M Alumni Association, Burke VA Volunteer Fire and Rescue Dept., Bishops Lenton Appeal Fund, Knights of Columbus, the Federalist Society, Nativity Catholic Church, and the Cherry Run Elementary PTA. The National Rifle Association organization lobbies before public bodies.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Florida Bar, 1990,  
District of Columbia Bar, 2000  
Supreme Court Bar, 2000

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

-None-

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent Health, Last Physical Exam in 2000

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1978-86, Dade County Republican Executive Committee, Elected

15. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

-None-



2. whether you practiced alone, and if so, the addresses and dates;

-None-

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1983-86, Florida State Representative Ileana Ros-Lehtinen,  
8420 NW 58 Street, Miami, FL 33166  
Administrative Assistant

1988-89, Cumberland School of Law, Law Library,  
800 Lakeshore Drive, Birmingham, AL 33166  
Book Circulation Student Worker

Summer 1988, National Labor Relations Board,  
1099 14 Street, NW, #11100  
Washington, DC 20570  
Summer Law Clerk

1989, 1990 & 1992, Ros-Lehtinen for Congress  
PO Box 52-8427  
Miami, FL 33152  
Deputy Campaign Coordinator

1989-Present, Congresswoman Ileana Ros-Lehtinen  
2160 Rayburn House Office Building  
Washington, DC 20515  
Legislative Director, Press Secretary,  
Administrative Assistant, Chief of Staff

1995, 1996 & 1997, GETM, Inc., (Spouse's mail-handling business).  
PO Box 246  
Burke, VA 22015  
Mail Handler

1994-96, Subcommittee on Africa, House Intl. Relations Com.  
2170 Rayburn House Office Building  
Washington, DC 20515  
Staff Director

1996-00, Subcommittee on Intl. Economic Policy and Trade, HIRC  
2170 Rayburn House Office Building  
Washington, DC 20515  
Staff Director

2000-Present, Subcommittee on Human Rights and Intl.  
Operations, HIRC  
Washington, DC 20515  
Staff Director

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My practice of law has been basically governmental by working for the U.S. House of Representatives since I graduated from law school in 1989. Throughout all of those years I have worked on; bill drafting, legislative conference negotiations, prepared analysis for legislative and oversight hearings as well as being responsible for running the office. I also supervised and handled legislative constituent correspondence and constituent case work throughout all my congressional years.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Through my employment with Congresswoman Ileana Ros-Lehtinen, one may consider the people of the 18th Congressional district of Florida as my former clients and therefore I would describe them as a large multi-cultural community which is economically diverse and heavily engaged in international trade and immigration issues. I mostly dealt with issues relating to trade or immigration, but one of the earliest issues I help constituents deal with was confiscated property cases and over the years I have worked on hundreds of those cases.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

-Not at all-

2. What percentage of these appearances was in:  
 (a) federal courts;  
 (b) state courts of record;  
 © other courts.

-NA-

3. What percentage of your litigation was:  
 (a) civil; -NA-  
 (b) criminal. -NA-

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

-NA-

5. What percentage of these trials was:  
 (a) jury; -NA-  
 (b) non-jury. -NA-

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representations;

-NA-

- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

-NA-

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Throughout my Congressional career I have mostly dealt with issues relating to trade or immigration, but one of the earliest issues I help constituents deal with was confiscated property cases and over the years I have worked on hundreds of those cases. I would say that the most significant legal activity I did was to participate in the drafting of the Helms Burton legislation as well as my participation in the House-Senate Conference which resulted in the Clinton Administration agreeing to support the bill.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have made no arrangements to be compensated in the future for any financial or business interest. I expect to receive retirement benefit from my 401 (k) and my wifes mutual funds and IRAs.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will consult with the ethics official for the Foreign Claims Settlement Commission in the event of a potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No, I do not have any plans commitments, or agreements to pursue outside employment, with or without compensation, during my service on the Commission.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Form SF-278 is attached.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

1982 Deputy Campaign Manager  
Glenn Rinker for Congress

1989 Deputy Campaign Manager  
Ros-Lehtinen for Congress

1990 Deputy Campaign Manager  
Ros-Lehtinen for Congress

1992 Deputy Campaign Manager  
Ros-Lehtinen for Congress



U.S. Department of Justice

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Washington, D.C. 20530

JUL 16 2001

Ms. Amy L. Comstock  
Director  
Office of Government Ethics  
Suite 500  
1201 New York Avenue, NW  
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Mauricio J. Tamargo, who has been nominated by the President to serve as Chairman, Foreign Claims Settlement Commission, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. Tamargo recuse himself from participating personally and substantially in a particular matter in which he, his spouse, minor children or anyone whose interests are imputed to him under the statute, has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests.

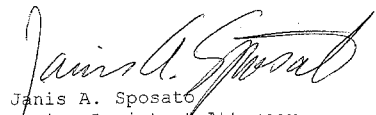
We have advised Mr. Tamargo that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter involving specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. Mr. Tamargo will have a covered relationship with his spouse's employer.

Ms. Amy L. Comstock

Page 2

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janis A. Sposato". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline that extends to the right.

Janis A. Sposato  
Acting Assistant Attorney  
General for Administration and  
Designated Agency Ethics Official

Enclosure

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Mauricio Jesus Tamargo Page 1 of 5

Revised: 10/29/00

Reporting Individual's Name		Reporting Status	Incumbent	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate	Termination Filer	Termination Date (If Applicable) (Month, Day, Year)
Last Name: Tamargo		Block Appropriate Boxes	<input type="checkbox"/>		XX	<input type="checkbox"/>	
First Name and Middle Initial: Mauricio J.							
Position for Which Filing: Chairman, Foreign Claims Settlement Commission		Department or Agency (If Applicable): Department of Justice					
Location of Present Office (for forwarding address): Cong. Ros-Lehtinen, Washington DC 20515		Telephone No. (include Area Code): 202/225-3931					
Positions Held with the Federal Government During the Preceding 12 Months (If Not Same as Above): Chief of Staff, Congresswoman Ros-Lehtinen							
Presidential Nominee Subject to Senate Confirmation: Judiciary		Do You Intend to Create a Qualified Divorced Trust? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Certification: I CERTIFY that the statements I have made on this form and all attached Schedules are true, complete and correct to the best of my knowledge.		Signature of Reporting Individual: <i>Mauricio J. Tamargo</i> Date (Month, Day, Year): 7/13/01					
Other Review (if desired by agency):		Signature of Other Review: <i>Mona G. Gaudin</i> Date (Month, Day, Year): 7/16/01					
Agency Ethics Official's Opinion: The basis of information contained in this report. I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below):		Signature of Designated Agency Ethics Official/Reviewing Official: <i>Janis A. Spotal</i> Date (Month, Day, Year): 7/16/01					
Office of Government Ethics Use Only:							
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet):							
(Check box if filing extension granted & indicate number of days) <input type="checkbox"/>							
(Check box if comments are continued on the reverse side) <input type="checkbox"/>							

Supersedes Prior Editions, Which Cannot Be Used

**Fee for Late Filing**  
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.

**Reporting Periods**  
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

**Termination Filers:** The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

**Nominees, New Entrants and Candidates for President and Vice President:**

**Schedule A**—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

**Schedule B**—Not applicable.

**Schedule C, Part I (Habilitated)**—The reporting period is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

**Schedule C, Part II (Agreements or Arrangements)**—Show any agreements or arrangements as of the date of filing.

**Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

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Reporting Individual's Name <b>Mauricio Tamargo</b>		<b>SCHEDULE A</b>		Page Number <b>2a of 5</b>	
<b>Assets and Income</b>		<b>Valuation of Assets at close of reporting period</b>		<b>Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.</b>	
<b>BLOCK A</b>		<b>BLOCK B</b>		<b>BLOCK C</b>	
<p>For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period, or which generated more than \$200 in income during the reporting period, together with such income.</p> <p>For yourself, also report the source and actual amount of earned income exceeding \$200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).</p> <p>None <input type="checkbox"/></p>		<p>None (or less than \$1,001)</p> <p>\$1,001 - \$15,000</p> <p>\$15,001 - \$50,000</p> <p>\$50,001 - \$100,000</p> <p>\$100,001 - \$250,000</p> <p>\$250,001 - \$500,000</p> <p>\$500,001 - \$1,000,000</p> <p>Over \$1,000,000*</p> <p>\$1,000,001 - \$5,000,000</p> <p>\$5,000,001 - \$25,000,000</p> <p>\$25,000,001 - \$50,000,000</p> <p>Over \$50,000,000</p>		<p>Income Type</p> <p>Dividends</p> <p>Rent and Royalties</p> <p>Interest</p> <p>Capital Gains</p> <p>None (or less than \$201)</p> <p>\$201 - \$1,000</p> <p>\$1,001 - \$2,500</p> <p>\$2,501 - \$5,000</p> <p>\$5,001 - \$10,000</p> <p>\$10,001 - \$100,000</p> <p>\$100,001 - \$1,000,000</p> <p>Over \$1,000,000*</p> <p>Over \$5,000,000</p> <p>Other Income (Specify Type &amp; Actual Amount)</p> <p>Date (Mo., Day, Yr.)</p> <p>Only if Honoraria</p>	
<p>Examples</p> <p>General Airlines Common</p> <p>Dee Jones &amp; Smith, Homeowners, State</p> <p>Kempstone Equity Fund</p> <p>BAC Heartland 500 Index Fund</p>					
1 Fairfax County Public School, Fairfax, VA					
2 Fidelity VIP Growth FD		X			
3 NSAT Total Return Fd.		X			
4 VA Retirement Sys. Defined benefit, not vested,		X			
5 Prayfus Prem Bal. Fd.		X			
6 Gartmore Total Return Fd.		X			

\* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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**Prior Editions Cannot Be Used.**



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Reporting Individual's Name <b>Mauricio Tamargo</b>		<b>SCHEDULE D</b>		Page Number <b>5 of 5</b>	
<b>Part I: Positions Held Outside U.S. Government</b>					
<small>Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.</small>					
<small>None <input checked="" type="checkbox"/></small>					
	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
<small>Examples</small>	Nat'l Assn. of Rock Collectors, NY, NY Doe Jones & Smith, Hometown, State	Non-profit educational Law firm	President Partner	6/92 7/85	Present 1/88
1					
2					
3					
4					
5					
6					
<b>Part II: Compensation in Excess of \$5,000 Paid by One Source</b>					
<small>Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.</small>					
<small>Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.</small>					
<small>None <input checked="" type="checkbox"/></small>					
	Source (Name and Address)	Brief Description of Duties			
<small>Examples</small>	Doe Jones & Smith, Hometown, State Metro University (client of Doe Jones & Smith), Hometown, State	Legal services Legal services in connection with university construction			
1					
2					
3					
4					
5					
6					

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## FINANCIAL STATEMENT

NET WORTH  
*Mauricio & Tara Tamargo*

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	5	000	Notes payable to banks—secured	-0-	-0-
U.S. Government securities—add schedule	-0-	-0-	Notes payable to banks—unsecured	-0-	-0-
Listed securities—add schedule	350	00	Notes payable to relatives	-0-	-0-
Unlisted securities—add schedule	76	00	Notes payable to others	-0-	-0-
Accounts and notes receivable:			Accounts and bills due	22	915
Due from relatives and friends	-0-	-0-	Unpaid income tax	-0-	-0-
Due from others	-0-	-0-	Other unpaid tax and interest	-0-	-0-
Doubtful	-0-	-0-	Real estate mortgages payable—add schedule	449	520
Real estate owned—add schedule	550	000	Chattel mortgages and other liens payable	-0-	-0-
Real estate mortgages receivable	-0-	-0-	Other debts—itemize:	-0-	-0-
Autos and other personal property	8	000			
Cash value—life insurance	-0-	-0-			
Other assets—itemize:	-0-	-0-			
Household furnishings	50	000			
Jewelry	10	000			
401(k) & IRA's spouse Mutual Funds	209	109			
Total assets	832	535	Total liabilities	472	435
			Net worth	360	100
			Total liabilities and net worth	832	535
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	-0-	-0-	Are any assets pledged? (Add schedule, if any.)	No	
On leases or contracts	-0-	-0-	Are you defendant in any suits or legal actions?	No	
Legal Claims	-0-	-0-	Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	-0-	-0-			
Other special debt	-0-	-0-			

**MAURICIO J. TAMARGO  
FINANCIAL STATEMENT  
NET WORTH**

**Schedules Added Here**

Listed Securities Cisco, 20 Shares -----\$350

Unlisted Securities, GETM, Inc. (Spouse owned home mail-handling Bus.  
[now inactive])-----\$76

Real Estate Owned, Mauricio & Tara Tamargo, in Fairfax County, VA--- \$550,000

## Other Assets - Itemized

Household Furnishings and Jewelry-----\$60,000 (est)

Mauricio Tamargo's 401 (k)-----\$190,591

## Mutual Funds and IRAs in Spouses name

1)	Nationwide Family of Funds	\$5,198
2)	Educational Employees Supp.. Retirement	\$2,000 (est.)
3)	Virginia Retirement System	\$7,500 (est.)
4)	Nationwide Family of Funds	\$2,500
5)	Nationwide Family of Funds	\$660
6)	Nationwide Family of Funds	<u>\$660</u>
		\$18,518

Total Value 401(k) & Mutual Funds & IRAs-----\$209,109

## Real Estate Mortgages Payable

Wells Fargo Home Mortgage-----\$399,900

Wright Pitman Congressional Federal Credit Union-----\$49,620

Total Real Estate Mortgages Payable-----<\$449,520>

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

House of Representatives rules prohibit any outside legal fiduciary relationship. On a personal level I help my community through my church donations, membership in the Cherry Run PTA. For the last two years I also have gone with my son and his Boy Scout Troop to bring Christmas cookies and sing Christmas carols to the elderly and infirm in the old soldiers home in northern Washington. I also donate blood to the American Red Cross.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No



Senator DURBIN. This will conclude this morning's hearing. I want to thank Congresswoman Ros-Lehtinen for coming early and staying late. It is obvious that she is committed to you personally and to your nomination for this Commission.

As with the judicial nominees, the record for Mr. Tamargo will be open for one week to allow Committee members to submit written statements and follow-up questions. I ask my colleagues to try to do so earlier rather than later because we want to move the nominations along. Thank you again.

The hearing is adjourned.

[Whereupon, at 11:45 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

#### QUESTIONS AND ANSWERS

##### **Responses of Mauricio J. Tamargo to questions submitted by Senator Leahy**

*Question 1:* What will you top priorities for the Foreign Claims Settlement Commission be if you are confirmed as Chair?

*Answer:* If I am so honored as to be confirmed one of my priorities would be to raise the profile and public awareness of the services the Commission provides. I also would continue providing technical assistance to the Department of State and to the Congress as they deal with the issue of Americans who have suffered a loss at the hands of another country. I would also make sure that the records of past claims programs are readily accessible to the public as provided for in the law.

*Question 2:* Under a 1998 amendment to the statute governing the Foreign Claims Settlement Commission's jurisdiction, the Commission was given the responsibility of adjudicating any "category of claims against a foreign government which is referred to the Commission by the Secretary of State."

A. Do you know of any plans for the Secretary of State to refer any new categories of claims to the Commission?

*Answer:* As I stated in the Hearing, I do not know of any new categories of claims which the Department of State may be considering. I am familiar with the 1998 law providing for these Secretary of State referrals of new categories of claims. If I am so honored to be confirmed, I would be prepared to provide any technical assistance the Secretary may require in preparing such claims categories. I assure you that the Commission's involvement in this matter would be limited to providing technical assistance to the Secretary of State and it would not involve any policy questions relating to the creation of such new categories.

B. What about claims against Cuba by United States nationals who were Cuban nationals at the time of the loss of their properties, or any other category of claims against Cuba? Do you know of any plans for those sorts of claims to be referred to the Commission?

*Answer:* I am not aware of any discussions or plans to Secretary of State may or may not be having regarding new claims categories involving any country, including Cuba. If such a referral were to occur, the Commission's role would simply be to review questions of law. If confirmed to be Chair of the Commissions, I will be guided, and limited by, the laws which created the Commission and under which the Commission operates.

*Question 3:* Is it your belief that there will be new claims against Cuba before the Commission over the next few years, or do you think that the Commission will have a new Cuban claims program before long?

*Answer:* I am not aware of any plan or discussions about creating a new Cuba claims program. Here again, I would be guided by the law. The Commission plays no role in the shaping of policy issues involved in future claims programs other than providing technical assistance and information.

*Question 4:* The historic practice of the United States has been to have the Commission adjudicate only the claims of persons who were United States nationals at the time of their property loss or other injury. In the Commission's Cuban Claims program, the Commission, by congressional edict, did not consider claims by persons who were Cuban nationals at the time of their loss.

Courts of the United States have repeatedly ruled that a country does not violate international law by taking the property of persons who are nationals of that country at the time, even when the taking is without compensation.

Do you agree that if the Commission were to undertake a claims program for persons who were Cuban nationals at the time of their loss it would be contrary to Congressional intent and settled precedent?

*Answer:* The Commission will administer claims programs as directed by the law. Where there is ambiguity in the law, the Commission would look to Congressional intent and follow such intent as controlling authority. A claims program which allows non-citizens at the time of their loss to file claims with the Commission would run contrary to Congressional intent.

*Question 5:* The Commission's work can involve the interpretation and application of international law. To the extent that you lack experience and expertise in international law, what steps will you take to improve your base of knowledge in that area?

*Answer:* While I was staff director of the Subcommittee on International Economic Policy and Trade, I acquired some knowledge of international law because we held several oversight hearings and briefings with then Assistant Secretary of State, now Under Secretary of State, Ambassador Al Larson, regarding the U.S.-E.U. negotiations over the proper policy world wide on property rights and confiscation. If confirmed by the Committee and the Senate I would, as with any legal question, address the application of international law, by reviewing the available case law and seek the opinion of the General Counsel of the Commission. I also plan to keep up with the relevant legal literature and attend legal conferences on the subject.

There have been a variety of estimates of the numbers of claims that could that could be expected if the State Department does refer a new set of Cuban claims to the FCSC. The State Department estimates it could fall somewhere between 75,000 and 200,000 claims, and during the debate on Helms-Burton, some said the number could be as high as 400,000.

The rate of decision making on the initial claims by U.S. nationals against Cuba, between 1965 and 1972, was about 1,500 claims per year. That would mean the 10 attorneys at the Commission who handled these claims decided about 150 claims a year. Taking the middle of the estimates I mentioned, we calculate that the Commission would need to employ over 325 attorneys to process claims at the same rate.

A. Mr. Tamargo, do you have any estimate so to the number of claims that could be expected if the State Department refers claims of those who Cuban nationals at the time of the loss of their property?

*Answer:* I have no estimates as to the number of claims the Commission could expect in such an eventuality. I would want to look at the laws and precedent applicable to this hypothetical to see if the Commission would be obliged to administer such a claims program. I do understand the Committee's concern on this issue and if confirmed I pledge to proceed carefully and follow the law.

B. Do you have any thoughts about or plans to hire additional attorneys if Title III is implemented? Can you provide us with an estimate of the kinds and amounts of resources that would be needed to support such a claims program?

*Answer:* If there is a new claims program created or Title III of Helms-Burton is implemented, I would work with the Congressional Committees of jurisdiction to help determine what resources the Commission might need. This process would include providing Congress technical information such as the number of claims likely to occur; past programs of comparable size and the amount of time and resources it took to administer them; and a proposal with description of how the increase in funds would be administered. Understanding the fiscal challenges which face the Congress, I would make myself available to the Committees in order to arrive at an appropriate funding level.

*Question 7:* I think we are all hopeful that relations with Cuba will be normalized one way or another in the not so distant future. If there were thousands, or even tens of thousands of claims pending at the time of normalization, what sort of obstacle to that process could those claims pose?

*Answer:* I appreciate the Committee's interest; however, this question addresses an issue that will have to be dealt with by the Congress and the policy entities of the Administration, not the Commission. The statutes that created the Commission state clearly that the Commission is to be an independent quasi-judicial agency which adjudicate claims of American citizens who have suffered a loss from the actions of another country.

### Responses of Mauricio Tamargo to questions submitted by Senator Durbin

*Question 1:* As you know, the State Department now has legal authority to refer new categories of foreign claims to the Foreign Settlement Claims Commission. At the same time, the Commission is part of the Justice Department, and it has an independent statutory responsibility to decide claims by applying “applicable principles of international law.”

A) If confirmed as chairman of the Commission, would you make an independent assessment to determine whether a category of claims referred by the State Department was consistent with applicable principles of international law?

*Answer:* If so honored as to be confirmed I will keep all my deliberations independent and free of any policy considerations. I would be guided by U.S. law and would apply applicable principles of international law. I would defend the independent status of the Commission within the Department of Justice as my predecessors have done before now.

B) If you concluded that a category of claims referred by the State Department was not consistent with international law, how would you adjudicate those claims?

*Answer:* If I examined a category of claims referred to the Commission by the Department of State and found them to be inconsistent with international law and not provided for or authorized by U.S. law, then I would adjudicate the claims as not valid. As you stated above, the Commission is a quasi-judicial independent agency administered by the Department of Justice. The Commission takes no positions on foreign policy questions and takes no direction on issues of law from foreign policy departments. The only guide that the Commission follows is the law. Any other considerations are not relevant.

*Question 2:* What is your view of the role of the Foreign Claims Settlement Commission vis-à-vis the State Department and other agencies that have responsibility for U.S. foreign policy?

*Answer:* The role of the Commission vis-à-vis the foreign policy agencies is to provide those agencies, the Department of State mainly, with technical assistance in dealing with property rights and confiscated property issues, to assist them in negotiations with other countries on the same issues—such as the numbers of claims likely to arise, value of the property in questions, the history of the property. That is the role for the Commission, as provided by the laws that created the Commission.

*Question 3:* In your view, would it be consistent with “applicable principles of international law” for the Commission to award claims for seized property to those who were not U.S. citizens at the time that their property was seized? Please explain.

*Answer:* I do not believe the claims would be valid under applicable principles of international law and Commission precedent if the claimants were not U.S. nationals at the time they suffered a loss by the foreign government. Where U.S. law is silent, the Commission is guided by applicable principles of international law.

*Question 4:* Let me ask you specifically about possible claims against Cuba. From 1965 to 1972, the Commission decided over 8,800 claims by U.S. nationals against Cuba. During the debate over the Helms-Burton Act, lawmakers estimated that implementation of Title III of the Act would result in 3000,000 to 400,000 new claims against Cuba by Cuban-Americans. The State Department has estimated that such claims could total tens of billions of dollars. There might be even more claims if the State Department referred a new Cuban claims program to the Foreign Claims Settlement Commission that was subject to looser constraints than Title III.

A) In your view, is the Commission equipped to handle a much greater volume of claims that a new Cuban claims program might bring?

*Answer:* Having a staff of only 11, counting the Commissioners, the Commission would certainly need more attorneys and support staff. To administer any new claims program, the Commission would need to look at past claims programs of comparable size and study how many claims are likely to occur based on the size of the class of potential people and the amount of money involved in each claim, using an average. The Commission would also need to consult with the Congress and the Administration to determine the desirable turn-around time for each claim. After considering all those factors, the Commission, in conjunction with the Congress and the Administration, would propose a budget projection.

B) If new Cuban claims were referred to the Commission, what steps would you take as Chairman to secure the needed resources?

*Answer:* I would continue working with the Congress so that the Commission would be authorized, as in past claims programs, to deduct 1.5% from all funds received from a foreign government, to go to the US Treasury to defray the administrative expenses of conducting the claims program. Additionally, I would work with the Congress and the Administration to arrive at a budget request that is a realistic and practicable.

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SUBMISSIONS FOR THE RECORD

UNITED STATES SENATE  
WASHINGTON, D.C. 20510-0905  
*November 13, 2001*

The Hon. Patrick Leahy  
Chairman  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
*Washington, D.C. 20510*

Dear Chairman Leahy:

I am writing to express my support of the confirmation of Mauricio Tamargo as Chairman of the Foreign Claims Settlement Commission at the Department of Justice pending before the Senate Judiciary Committee.

My staff has gotten to know Mauricio and has worked with him on various issues. We have witnessed his impartiality, integrity, and hard work and believe that he is a strong and effective leader. I am confident that Mauricio would succeed as Chairman of the Foreign Claims Settlement Commission and that he would be an effective advocate for Americans Seeking to recover confiscated property and losses.

Currently, he is the Staff Director for the Subcommittee on International Operations and Human Rights and also serves as the Chief of Staff and Legal Counsel for Congresswoman Ileana Ros-Lehtinen. His many years of experience in international affairs and his commitment to justice and constituent service make him the ideal candidate for the post.

Your Consideration of this request is greatly appreciated.

Sincerely,

BILL NELSON

---

HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515  
*October 11, 2001*

The Hon. Patrick Leahy  
Senate Judiciary Committee  
United States Senate  
433 Russell Senate Office Building  
*Washington, D.C. 20510-4302*

Dear Chairman Leahy:

The White House has recently announced the nomination of Judge Philip Martinez to the position of Federal Judge for the Western District of Texas. I am writing to pledge my full support for Judge Martinez and recommend and request that you approve his nomination and appoint him to the Federal Judiciary as quickly as possible.

Judge Martinez is an outstanding officer of the court with more than ten years experience at the trial court level. Judge Martinez has presided over felony, juvenile and civil cases throughout his distinguished career. He has effectively managed a vigorous trial docket and has a reputation of diligence balanced with fairness and thoughtfulness. As a result of his various professional accolades, he was elected by his colleagues and served as the Local Administrative Judge for three years.

Judge Martinez grew up in El Paso, Texas and would serve his community and the nation with distinction if allowed the opportunity. He is a graduate of the University of Texas at El Paso and Harvard Law School. His record is one of accom-

plishment and thus merits your serious consideration. Furthermore, his professional credentials and complimented by the qualities reflected in his numerous charitable and community activities.

As you know, the Western District of Texas faces a rigorous court docket each year. Caseloads for the U.S. Attorney's Office in the Western District of Texas are rapidly increasing. The Federal courts in El Paso handled over 1,600 criminal cases in 1998 and over 1,900 in 2000. Undeniably, Judge Martinez would be able to step into this position and immediately focus his attention on advancing cases through the system. Supplemental training would be unnecessary due to Judge Martinez's vast experience in the judicial community. In our country's war on drugs, we can ill afford to lose ground by delaying judgement on those who are waging the war by violating our laws.

Please do not hesitate to contact me, or Nicholas Almanza of my staff, if you are in need of additional information or if you have questions concerning Judge Martinez. I thank you for your consideration.

Sincerely,

SILVESTRE REYES  
*Member of Congress*

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**Statement of Hon. Richard C. Shelby, a U.S. Senator from the State of Alabama**

Mr. Chairman, it is with great pleasure that I speak today in support of Jenny Granade's nomination to be United States District Court Judge for the Southern District of Alabama. Her excellent credentials speak for themselves. Throughout her academic and professional career, she has consistently proven herself to be a distinguished scholar and practitioner of law.

After completing law school at the University of Texas, Mrs. Granade served as a law clerk to the Honorable John C. Godbold, Jr., United States Court of Appeals for the Fifth Circuit, where she gained valuable experience researching and writing legal opinions. At the conclusion of her judicial clerkship, she obtained a position with the United States Department of Justice. In her twenty-four years with the Department, she served as an Assistant U.S. Attorney, Chief of the Criminal Division of the U.S. Attorney's Office, and most recently as U.S. Attorney for the Southern District of Alabama. During her tenure, she vigorously prosecuted complex cases involving white-collar crime, tax fraud and public corruption.

I believe that Ms. Granade's vast experience and legal knowledge make her an ideal nominee for the federal bench. I know that she will continue to serve our great country with honor and distinction as a federal judge. Mr. Chairman, I therefore urge the committee to discharge Mrs. Granade's nomination without reservation, and I hope the full Senate will be able to consider her nomination before we adjourn this year. Thank you Mr. Chairman.



**NOMINATION OF DAVID L. BUNNING, OF KENTUCKY, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY**

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**MONDAY, DECEMBER 10, 2001**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:10 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Patrick Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Hatch, McConnell, Kyl, and Sessions.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. I thank everybody for being here and I hope your travel arrangements were worked out. I scheduled this hearing on the Monday after discussions with Senator McConnell and Senator Bunning and Senator Hatch. I had been told the number of witnesses that the nominee wished to bring here and felt that it would be a lot easier to do it on a Monday rather than in the middle of the week.

This, I believe, is the 17th nomination hearing we have had, the 11th judicial nominations hearing, since the Senate reorganized in July. We have confirmed, I think, 21 judicial nominees since July, including three last week. There are several others on the calendar. I think some are up for a vote tomorrow. I fully expect they will make it through.

As I have pointed out to some of my colleagues, we confirmed in those four or five months about twice as many Courts of Appeals judges as were confirmed in the first year of the Clinton administration, and more than all the judges in 1996. We are trying to move forward before the end of this year.

A number of things have thrown us off schedule. One, we did not reorganize until mid-July, but also, we all know the terrible, terrible events of September 11 and how that disrupted everything in the Senate. Then we had the anthrax issue, something that I have probably given more than a little personal attention to, that closed down the Hart Building, and has still closed down the Hart Building. I think some of the Senators on this Committee, Senator Hatch, I know, is in the Hart Building. I do not know if Senator Kyl is.

Of course, just as important as the 50 Senators who are in there, there is a great deal of the staff. It closed down the Dirksen Build-

ing for a number of days, where a lot of the Judiciary Committee staff, both Republican and Democratic staff, are located and staff do all the work, we merely being constitutional necessities for the staff. That slowed things up.

We did hold a number of judicial hearings even on the day that part of the Capitol was being evacuated. We still went ahead. We had a series of votes and the Committee crowded into one room where we passed out nominations. Even as the police were telling us they were evacuating part of the Capitol building, we stayed and voted out a number of President Bush's judicial nominations and then held several hearings that same day.

I have tried to keep this going, even though I was one of the two recipients of the anthrax letters, and the attempt made to kill me and others in the Senate.

Today, we are going to consider the nomination of David Bunning to be United States District Court Judge for the Eastern District of Kentucky. The Eastern District of Kentucky is a district that has been fortunate to have the President send nominations for its vacancies. A lot of the District Courts, the President did not send up nominations, but this one, he has.

Since the elections in 2000, three vacancies have arisen on the Eastern District bench. Three nominees have been sent to the Senate and I applaud the two Senators from Kentucky in pushing hard to do that, because almost 70 percent of the current District Court vacancies around the country, the President has not sent a nominee. On those 70 percent, there is no nominee. Here, there is 100 percent. Two of them, we moved rather quickly.

I think we scheduled a hearing for Karen Caldwell six days after her file was complete. I think we had, and Senator McConnell, correct me if I am wrong on this, we got a report out of the Committee 16 days later. And then 25 days after her file was completed, she was confirmed by the Senate.

Danny Reeves, another nominee for that same district, was able to have a hearing only 40 days after his file was complete. He was voted out of the Committee shortly after that. He was confirmed last Thursday, barely two months after the time all his paperwork was completed.

So it is in sharp contrast to some of the days in the past, and we want to do even better.

I want to also thank Senator Hatch and the White House for agreeing to break the biggest logjam we faced up here and that was a reluctance on the part of the White House to have nominees answer one of the questions, a question which I thought was very appropriate, the question being, have you been convicted of anything within the last ten years that is a matter of public record? For some reason, the White House has been reluctant to have judges answer that. It slowed everything up. As soon as that logjam was broken with the help of Senator Hatch, we were able to get, I think within about 24 hours of that, we voted a number of judges out of Committee.

I mention that only because I know that if somebody would apply for a clerical job in a Federal Court, they would have to at least assure the judge or the chief clerk or somebody that they had not been convicted of anything within the last ten years, and we



thought that might not be a bad idea, not only for judges, but Marshals, U.S. Attorneys, and high-ranking officials of the Justice Department.

With Mr. Bunning's matter, he comes here highly recommended by his home State Senators, and I want to mention that that is a matter and has always been a matter that people on both sides of the aisle on this Committee have looked to. The recommendation of one of them is fully expected and both of them is extremely good. He is also highly recommended by people he has worked with in the U.S. Attorney's Office.

But the American Bar Association Standing Committee on Federal Judiciary has informed us that a majority of their Committee finds Mr. Bunning not qualified for the Federal bench, and such an assessment has traditionally and sensibly meant that the nomination gets a closer look than those the ABA ranks as "qualified" or "well qualified." I should also emphasize that it has been my experience in 25 years here that the ABA recommendation is an advisory one, but each Senator has to make up his or her mind, and neither the ABA nor the Senate Judiciary Committee expect their recommendations to be dispositive of the issue.

I agree with my colleagues across the aisle. Senator Sessions supported the thoroughness and accuracy of the ABA investigatory process in his remarks on the Senate floor on October 16. As Senator Sessions said, the ABA talks to people who have litigated in ten situations with the nominee, then they make their recommendations. He said he thinks it is a pretty good process.

The ABA Standing Committee does an excellent job of conducting its independent professional and confidential peer review of the qualifications of judicial nominees, so we do give deference to the results of this tried and true and tested method of investigation, both when the results are favorable or unfavorable.

For 50 years, beginning with the Eisenhower administration and ending on the last day of the Clinton administration, the ABA provided this invaluable public service on which Presidents and Senators relied. Before a nomination, during the time the FBI and the Department of Justice were evaluating the candidates, the ABA would receive their names. They would return to the administration a rating reflecting their review of the potential nominee's qualification. This was done before any names came up here in the past, and I think the process worked smoothly and productively until the beginning of this year.

President Bush decided he would no longer provide the ABA with the candidates' names prior to nomination. I would emphasize the President has an absolute right to do that, although it did break with the 50-year tradition of having the President have a chance to look at those recommendations prior to making a nomination.

So now the ABA has to wait until the nomination is made, the name is out there, it is sent up here, and then they have to go out to do their evaluation. The nomination is already a fait accompli, but they go forward.

It has two effects. One, it extends the time the nominee must wait before you can have a hearing by six or eight weeks, and I did not count the time, really, until the ABA report is completed.

But it also eliminates a crucial early warning system for the White House and for us.

I wish the President had not shifted that role, but I am glad that the ABA will still provide their evaluations to our Committee. I also want to compliment the ABA, which has a number of extremely qualified lawyers in both parties who donate their time to this effort, actually, time that would cost us millions of dollars if we were to have to pay for it, but they do it as a pro bono matter.

So this morning, after we hear from Mr. Bunning's home State Senators, then from the nominee himself, we are going to hear from a panel of witnesses from the ABA Standing Committee. Roscoe Trimmier, a partner in the Boston law firm of Ropes and Gray and the chair of the Committee, will testify about the process. David Weiner, a partner in the Cleveland firm of Hahn, Loeser and Parks, the Committee's Sixth Circuit representative, will tell us in more detail about the peer review he conducted on Mr. Bunning. Also available to answer questions, Judah Best. Mr. Best is a partner in the Washington office of Debevoise and Plimpton and is a former chair of the ABA Committee and well respected by members of this Committee.

Then we will hear four more witnesses requested, appropriately, by the Republican side of the aisle, who will talk about their professional opinions of Mr. Bunning, and I must say, speaking for both sides of the aisle, we are honored to have on that panel this morning three United States District Court judges and a former United States Attorney. All are from the Eastern District of Kentucky. Judge Henry Wilhoit, on senior status, has served on the Federal bench since he was appointed by President Reagan in 1981. Judge Karl Forester, the current Chief Judge, has been on the bench since he was appointed by the first President Bush in 1988. Judge Joseph Hood has served since his appointment by the first President Bush in 1990. So we look forward to their testimony.

With that just to lay it out, because this is a somewhat different than normal hearing, I yield to my good friend, the senior Senator from Utah, a man who has had as much or more experience as anybody else on this Committee.

**STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Thank you, Mr. Chairman, and I am very grateful that you have been able to schedule this hearing for Mr. Bunning, for whom I have a great deal of respect and who I wholeheartedly recommended to the White House for this job, knowing of his background both civilly and criminally in litigation for our government and the experience that he has.

I think the administration has done an excellent job on judges so far. Currently, we have 100 vacancies. There are 43 who are awaiting hearings, including Mr. Bunning here today. We have had 21 who have been confirmed and we have six pending on the floor. This will add a seventh. So we are moving, but not as fast as we really need to move as a Judiciary Committee.

I might add that on the questionnaire, it was not a problem for the administration to list the prior convictions that are on the pub-

lic record. That was never the problem. It was that there were other matters which we had to resolve, which we did, and I am pleased that we were able to get that resolved.

We are also pleased to have all of the witnesses here today who will help us to understand.

I am very pleased that you have convened this hearing this morning to consider the nomination of David Bunning to be a United States District Judge in the Eastern District of Kentucky. My examination of Mr. Bunning's qualifications convinced me to recommend him in the first place to the White House, but also that during the course of his career, he has demonstrated abundant capacity, integrity, and temperament to serve as a Federal District judge.

Although I am very pleased that we are having this hearing, I must say that I am not so convinced that it is really necessary. The Committee has reviewed a great deal of information about Mr. Bunning, from the FBI files to his writings to letters from interested parties. We know his employment history, his work ethic, and even what lawyers who have opposed him in court think about him. Indeed, the Committee has as much information about Mr. Bunning as we have ever had about any judicial nominee, it seems to me.

So the purpose of this hearing is not to find out more about Mr. Bunning, but rather to find out why, in its single-sentence conclusion, the ABA, which is only one of the outside groups who have weighed in on this nomination, said he is not qualified. Members of this Committee do not know why the ABA chooses to label judicial nominees as qualified or not, and, of course, the ABA does not share any information with the Committee other than its one-sentence conclusion. Even in cases where the decision is controversial, the ABA will not disclose its reasons or rationale.

I have to be frank here and say that this is one of the main reasons that I find the ABA's reviews less and less essential to the Committee's confirmation process than some of my colleagues do. I simply find it less than persuasive when I read, as in Mr. Bunning's case, a bare conclusion with no facts, analysis, or anything else to back it up, so today will be an opportunity for the ABA to do so.

Now, I appreciate completely the ABA's explanation of the need to foster a full deliberation among its reviewers, as I also understand the need to keep confidential the FBI files that the Committee has provided for each nominee. If the Committee has asked the executive branch for FBI files, which we receive, and if the FBI can trust us here with the most sensitive information, then why cannot the ABA? Is the ABA information more sensitive than the critically sensitive FBI files?

If the ABA evaluations are to be most helpful to the Committee, then I believe that the Committee can and should receive the benefit of the ABA files, including the interviews, discussions, and reasoning, instead of a one-line cursory conclusion that, in many cases, feeds the growing public perception that the ABA's evaluations are arbitrary, capricious, and may be tainted by politics.

These questions, of course, have nothing to do with Mr. Bunning or his qualifications to serve as a Federal District judge. As I said,

I have learned a great deal about Mr. Bunning from the information provided by him and other sources to the Committee. Mr. Bunning is a Kentucky native. He attended college at the University of Kentucky, graduating with a Bachelor of Business Administration degree with departmental honors. He then went on to graduate from the University of Kentucky College of Law.

During law school, Mr. Bunning worked as a law clerk at the United States Attorney's Office for the Eastern District of Kentucky. He must have done a good job, because the office invited him to join as an Assistant U.S. Attorney, one of the most honorable and important jobs in the Federal law enforcement community, upon his graduation.

Mr. Bunning has enjoyed a well-balanced career in which he has gained valuable substantive experience in both civil and criminal Federal practice. He began his career in the U.S. Attorney's Office as an Assistant United States Attorney in the Civil Division, and during this time, he worked out of the main office in Lexington. For the first four years of his career, between 80 and 90 percent of his caseload consisted of a civil docket. One benefit of working in a smaller U.S. Attorney's Office is that a lawyer must become skillful in handling a wide variety of cases, a sort of jack of all trades. As a result, Mr. Bunning's civil experience has consisted of a broad range of cases, including prisoner litigation, medical malpractice cases, Federal Tort Claims Act cases, Bivens action cases, affirmative civil enforcement cases, and DEA drug diversion cases.

Often, the goal in civil litigation is to avoid the time, cost, and uncertainty of a trial. Mr. Bunning repeatedly achieved this goal on behalf of his civil clients. In one prison litigation case, Mr. Bunning represented 22 prison officials in a Bivens action, alleging that they had violated the plaintiff's constitutional rights. He successfully obtained summary judgment for all but one of these defendants. In another case, the District Court granted Mr. Bunning's motion to dismiss, which he drafted while he was still in law school, in a Federal Tort Claims Act case brought against the United States.

In 1995, having established his reputation as a skillful lawyer in the Lexington office, Mr. Bunning was transferred to the Covington satellite office, where he handled his own caseload with minimal need for supervision. The nature of his practice changed from primarily civil to largely criminal, and since 1998, his caseload has consisted exclusively of criminal cases. He has developed expertise in handling a wide variety of prosecutions, including narcotics cases, health care, Internet, and other white-collar fraud cases, violent crime, and forfeiture cases.

In one case, Mr. Bunning successfully prosecuted a defendant for Internet fraud and harassment. Before the defendant was sentenced, he and his brother embarked on a murder-for-hire scheme targeting not only the victim of the fraud and harassment, but Mr. Bunning, as well. Luckily, their scheme was thwarted and they were duly convicted and sentenced. As a result of his work in this case, Mr. Bunning was awarded the Department of Justice Annual Victim's Rights Recognition Award, as well as a commendation by the United States Secret Service. Mr. Bunning was also awarded a commendation in a separate case by the United States Customs

Service for his prosecution of the illegal importation of the party drug Ecstasy.

Mr. Bunning has accumulated a wealth of trial experience. Since joining the U.S. Attorney's Office, he has handled 20 civil and criminal trials as sole or lead counsel. He has also amassed significant appellate experience, having authored more than 50 appellate briefs and argued between ten and 15 cases before the Sixth Circuit Court of Appeals.

The high esteem in which the Kentucky legal community holds David Bunning is reflected in the numerous letters in support of his nomination that we have received. We have received letters from coworkers, from opposing counsel, and even a letter from a victim in a case he prosecuted. Although I regret that time limitations preclude me from reading excerpts from each letter, I would like to mention just briefly one of these letters. It is from Paul Vesper, an attorney in Covington, Kentucky.

He writes, "As a self-described liberal Democrat, I knew I would have to man the parapets to oppose any nomination by the recently inaugurated Republican occupant of the White House. And then to my delight, my colleague, David L. Bunning, was chosen to fill this post. I have known David in excess of 12 years, both as a competent practicing attorney, advocate for his clients, and lecturer on Federal issues and practices. You will certainly receive many comments attesting to his intellect, skills, and effectiveness, which are now his resume. But to me, for a Federal judge, the most important qualities are his integrity, genuine fairness, and no hint of aloofness. The litigants and lawyers before a Judge Bunning will be treated respectfully and receive prompt attention to their pleas. It is always hard for me to find nice things to say about Republicans, but I hereby volunteer for the task to praise David L. Bunning. I commend the President for his choice and I wish David long tenure as a confirmed appointee to the bench."

Mr. Chairman, I ask permission to enter into the record the full letter from Mr. Vesper, as well as the other letters we have received in support of Mr. Bunning's nomination.

Chairman LEAHY. Without objection, any letters or statements that any Senator wishes to include in the record in this matter will be done.

Senator HATCH. Thanks, Mr. Chairman.

I understand that in addition to the ABA witnesses, we will hear from four witnesses, who, like Mr. Vesper, have first-hand familiarity with Mr. Bunning's litigation experience, his courtroom demeanor, and his legal judgment. These witnesses include the former U.S. Attorney during the Clinton administration who was Mr. Bunning's supervisor for eight of his ten years as a Federal prosecutor and three Federal District Court judges before whom Mr. Bunning has practiced.

Not surprisingly, the judges are particularly interested in filling the vacancies in the Eastern District of Kentucky with solid, qualified persons. I know that is the case and I believe that David Bunning fits this description, which is why I proudly join with my colleague, Senator McConnell, in recommending to the President his nomination for the Federal bench in Kentucky.

So I look forward to hearing from the witnesses. Mr. Chairman, again, I want to thank you for this hearing and want to thank you for the work that you are doing. I have been very appreciative of the work lately in this Committee and very appreciative of you personally. Thank you.

[The prepared statement of Senator Hatch follows.]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

I am very pleased that you have convened this hearing to consider the nomination of David Bunning to be a United States District Judge in the Eastern District of Kentucky. My examination of Mr. Bunning's qualifications has convinced me that, during the course of his career, he has demonstrated abundant capacity, integrity, and temperament to serve as a federal district judge.

Although I am very pleased that we are having this hearing, I must say that I am unconvinced it is really necessary. The committee has reviewed a great deal of information about Mr. Bunning, from FBI files to his writings to letters from interested parties. We know his employment history, his work ethic, and even what lawyers who have opposed him in court think about him. Indeed, the Committee has as much information about Mr. Bunning as we ever have about any judicial nominee. So the purpose of this hearing is not to find out more about Mr. Bunning, but rather to find out why, in its single-sentence conclusion, the ABA, which is only one of the outside groups who have weighted in on his nomination, said he is not qualified.

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These questions, of course, have nothing to do with Mr. Bunning or his qualification to serve as a federal district judge. As I said, I have learned a great deal about Mr. Bunning from the information provided by him and other sources to the Committee. Mr. Bunning is a Kentucky native. He attended college at the University of Kentucky, graduation with a Bachelor of Business Administration degree with department honors. He then went on to graduate from the University of Kentucky College of Law.

During law school, Mr. Bunning worked as a law clerk at the United States Attorney's Office for the Eastern District of Kentucky. He must have done a good job, because the office invited him to join as an Assistant U.S. Attorney, one of the most honorable and important jobs in the federal law enforcement community, upon his graduation.

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"As a self-described 'liberal Democrat' I knew I would have to man the parapets to oppose any nomination by the recently inaugurated Republican occupant of the White House. And then to my delight, my colleague, David L. Bunning, was chosen to fill this post. I have known David in excess of 12 years, both as a competent practicing attorney, advocate for this clients, and lecturer on federal issues and practices. You will certainly receive many comments attesting to his intellect, skills, and effectiveness which are now his resume. but to me, for a federal judge, the most important qualities are his integrity, genuine fairness—and no hint of aloofness. The litigants and lawyers before a Judge Bunning will be treated respectfully and receive prompt attention to their pleas. . . . It is always hard for me to find nice things to say about Republicans, but I here by volunteer for the task to praise David L. Bunning. I commend the President for his choice and I wish David long tenure as a confirmed appointee to the bench."

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Chairman LEAHY. Thank you, Senator Hatch.

I understand from Senator McConnell that Senator Bunning will appear here just as a member of the family, but Senator McConnell wishes to make the introduction, so I will yield to Senator McConnell for that. Following the introduction by Senator McConnell, we will then hear from the nominee.

Senator McConnell?

**PRESENTATION OF DAVID L. BUNNING, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY BY HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

Senator MCCONNELL. Thank you, Mr. Chairman. Let me say first, Mr. Chairman, on behalf of my junior colleague and myself, we both are extremely grateful for the extraordinarily fair way you have handled this nomination. It is a credit to the Committee and we thank you very, very much for that.

Chairman LEAHY. Thank you.

Senator MCCONNELL. Mr. Chairman, I am an enthusiastic supporter of David Bunning's nomination to be a District Judge for the Eastern District of Kentucky. We are now down to only one vacancy—I see smiles on the faces of some of our judges on the front row—and we are going to complete the job here in the near future.

For over a decade, David Bunning has been in the legal trenches representing the United States as an Assistant U.S. Attorney in the very district in which he has been nominated to be a judge. In this capacity, David has served in both the Civil and Criminal Divisions of the U.S. Attorney's Office. He has handled hundreds of civil and criminal matters in Federal District Court. In addition, he has extensive experience at the appellate level. He has written approximately 50 appellate briefs and has presented numerous oral arguments. Clearly, this appellate experience is impressive for anyone, including your typical Assistant U.S. Attorney.

Because of David's acumen as a litigator, Mr. Chairman, he has real world legal experience far beyond the nominal experience that one would get by simply looking at his date of bar admission. In this regard, the comments of the Lexington Herald-Leader, the paper which covers the Eastern District and is familiar with both the Court and Mr. Bunning are instructive. It stated that, "Everything we know about Bunning suggests that his years of experience as a Federal prosecutor make him far more qualified for this job than someone who has spent 12 or 20 years shuffling papers instead of arguing cases in court."

Moreover, it must be emphasized that David's experience is in precisely, precisely the type of matters that constitute the majority of cases that Federal judges in the Eastern District must hear. Thus, with the hundreds of civil and criminal cases he has handled, David Bunning has the most relevant—the most relevant—experience that a judicial nominee for the Eastern District could possibly possess.

David also has a command of trial procedure and the rules of evidence. He has, in the heat of battle, decided which objections to make and how to make them. Mastery of the rules of evidence is critical for a trial judge, and David Bunning's skills in this regard are superlative.



But David Bunning is not just a skilled and experienced practitioner. He possesses the other personal qualities that are essential for the effective administration of justice. Among these are honesty, integrity, candor, diligence, courage, and last but not least, mercy.

It is no wonder, then, that David's nomination has received wide acclaim. In reading the written testimony and the numerous letters of recommendation, which Senator Hatch has already put in the record and so I will not do that again, I was struck by the support for David's nomination from every quarter, Republicans, Democrats, judges, practitioners, supervisors, colleagues, opponents, and clients.

In this regard, we are fortunate to have with us four distinguished members of Kentucky's legal community, three Federal judges who hold the very job for which Mr. Bunning has been nominated, and Mr. Bunning's supervisor for eight years, the former Clinton-appointed U.S. Attorney. The insights of these gentlemen are extremely valuable and their support for Mr. Bunning's nomination is highly significant.

Finally, although David loves the law and indeed has a reverence for it, he is a well-rounded person who understands the problems and challenges facing the Eastern District. He is devoted to his faith and his wife, Kay, and from what I hear, he is also a pretty good son. He will do Kentucky and the nation proud. If I did not have the utmost confidence in him, Mr. Chairman, I would not have recommended him for this nomination.

Again, I thank you, Mr. Chairman, for holding this hearing. I am hopeful that the Committee and the Senate will act expeditiously to confirm him so he can return to our Commonwealth, roll up his sleeves, and begin working hard to serve the people of the Eastern District.

Chairman LEAHY. Thank you very much.

Mr. Bunning, would you step forward, please. Would you raise your right hand.

Do you swear that the testimony you are about to give before this Committee shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BUNNING. I do.

Chairman LEAHY. Thank you. Please be seated.

Mr. Bunning, before you start, because it is a record that one always wants to have, would you be kind enough to introduce members of your family who are here.

**STATEMENT OF DAVID L. BUNNING, NOMINEE TO BE U.S. DISTRICT COURT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY**

Mr. BUNNING. Thank you, Mr. Chairman, if I could stand.

Chairman LEAHY. Sure. Of course.

Mr. BUNNING. First of all, I would like to thank you for convening this important hearing today. My parents, Mary and Jim Bunning; my wife, Kay, my brother-in-law, Terry Toles; my three children are at home with my mother-in-law, Mr. Chairman; and I am fortunate to have two of my cousins who live here in the District—three of my cousins that live in the District, Robert, Joan, and Susan Bunning.

Chairman LEAHY. And what are the names of your children?

Mr. BUNNING. Laura is five, Lou is four, and Emily is 18 months.

Chairman LEAHY. Please be seated. They will get a chance to read that. I want to make sure their names are in there. As impressed as they might be by your hearing, they are probably happier being home with their grandmother.

Mr. BUNNING. Probably so, Mr. Chairman.

Chairman LEAHY. Go ahead, Mr. Bunning.

Mr. BUNNING. I would defer and not make an opening statement.  
[The biographical information of Mr. Bunning follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name: (include any former names used).  
David Louis Bunning
2. Address: List current place of residence and office address(es).  
  
Residence: Ft. Thomas, KY  
  
Office: United States Attorney's Office  
513 Madison Avenue, 4<sup>th</sup> Floor  
P.O. Box 72  
Covington, KY 41012-0072
3. Date and place of birth:  
  
Date of Birth: July 14, 1966  
  
Place of Birth: Ft. Thomas, KY
4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
I am married to Kay Marie Bunning, formerly Williams. She is a Certified Public Accountant and is employed as Controller for the Jim Bunning Foundation. Her business address is c/o Richard Robinson, P.O. Box 6464, Cincinnati, OH 45202.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
I attended the University of Kentucky from August, 1984 through May, 1988, and attained a Bachelor of Business Administration Degree on May 8, 1988 with Departmental Honors in Business Administration.  
  
I attended the University of Kentucky College of Law from August, 1988, through May, 1991, and attained a Juris Doctor Degree on May 5, 1991.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee (since graduation from college).

May, 1988 - August, 1988

Laborer  
Brian Stegman Industries  
Dayton, Kentucky

May, 1989 - August, 1989

Law Clerk  
Adams, Brooking, Stepner, Wolterman, & Dusing  
Florence, Kentucky

May, 1990 - August, 1990

Law Clerk  
Adams, Brooking, Stepner, Wolterman, & Dusing  
Florence, Kentucky

September, 1990 - May, 1991

Law Clerk  
United States Attorney's Office  
Lexington, Kentucky

August, 1991 - October, 1991

Law Clerk  
United States Attorney's Office  
Lexington, Kentucky

October, 1991 - present

Assistant United States Attorney  
United States Attorney's Office  
Lexington & Covington, Kentucky

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Commendation, U.S. Customs Service, 2001, for successful prosecution of Kristie Kirsch & Jeffrey Galloway for illegal importation of Ecstasy.

Commendation, U.S. Secret Service, 2000, for successful prosecution of Randall Cope for Internet fraud and harassment.

Annual Victim's Rights Recognition Award, 1999, for work with victims in United States v. Randall Cope

Martindale-Hubbell Rating, BV rating. The BV rating, which identifies a lawyer with high to very high legal ability, reflects the confidential opinions of members of the Bar and the Judiciary.

9. Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Kentucky Bar Association	October, 1991 - present
American Bar Association	November, 1991 - March, 1993

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations  
National Association of Assistant United States Attorney's (NAAUSA)

Other Organizations  
YMCA of Campbell County, Kentucky

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Kentucky (all courts) - Admitted - October 17, 1991

United States District Court, Eastern District of Kentucky, Admitted - October 23, 1991

United States Court of Appeals for the Sixth Circuit, Admitted - October 30, 1991

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the committee. Also, please supply a copy of all speeches by you on issues involving

constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

While I have not published any materials, I have on occasion spoken to small groups of law enforcement officers on Fourth Amendment and other relevant law enforcement issues. For those small group discussions, I did not pass out materials. Rather, I would give updates on recent Sixth Circuit case law.

For the legal activities mentioned in question 19, the outlines and course materials were prepared by the sponsors.

13. Health: What is the present state of your health? List the date of your last physical examination. My health is excellent. The date of my last physical examination was May, 2001.
14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Not applicable.

15. Citations: If you are or have been a judge, provide:
- (1) a short summary of and citations for the ten most significant opinions you have written;
  - (2) a short summary of and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
  - (3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never sought or held a political or public office.

17. Legal Career:

(a) Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have never served a judicial clerkship.

2. Whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. The dates, names, and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

August, 1991 - October, 1991  
United States Attorney's Office  
110 West Vine Street, 4<sup>th</sup> Floor  
Lexington, Kentucky 40507

Nature of Connection: Law Clerk

October 17, 1991 - present  
United States Attorney's Office, Lexington & Covington, Kentucky

Lexington Address: 110 West Vine Street, 4<sup>th</sup> Floor  
Lexington, Kentucky 40507

Covington Address: 513 Madison Avenue, Suite 400  
P.O. Box 72  
Covington, Kentucky 41012-0072

Nature of Connection: Assistant United States Attorney, Civil and Criminal Divisions

- (b) 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

For approximately the first four years of my practice, from October, 1991, to the end of the 1995, calendar year, I was assigned to the Civil Division of the U.S. Attorney's Office in Lexington, Kentucky. During that period I handled a wide variety of civil litigation including prisoner litigation, medical malpractice, Federal Tort Claims Action cases, Bivens actions, affirmative civil enforcement cases, and DEA diversion cases. I also tried a number of criminal cases on the London, Kentucky, docket during that same period.

Beginning in December, 1992, I began to take on a limited criminal caseload on the Covington, Kentucky docket. From December, 1992, to the end of 1995, I would estimate that my caseload was 80% civil and 20% criminal. Among the trials I handled during this time was Murray v. Harris, an Ashland, Kentucky docket, Bivens case involving 22 defendants sued in their individual and official capacities. I was successful in obtaining summary judgment in favor of all but one defendant. A jury ruled in favor of the remaining defendant at trial. Most of my criminal cases during this period were narcotics and fraud prosecutions.

Beginning in approximately December, 1995, I was assigned full time to the Covington, Kentucky, satellite office. At that time my caseload switched to approximately 20% civil and 80% criminal. Each year I handled more and more criminal work and since February, 1998, when I successfully defended four correctional officers accused of using excessive force (see Dunlap v. Fields, London, Kentucky Civil Docket No. 94-53, section 18 infra), I have almost exclusively handled criminal cases.

With very little exception, 100% of my practice since October, 1991, has been in federal court.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

While handling civil cases, I defended the United States in a wide variety of civil litigation. The areas of concentration included civil rights cases, employment rights cases, prisoner's rights cases, Bivens cases, Federal Tort Claims Action cases,



including medical malpractice and property rights cases, and DEA drug diversion cases.

In most of these civil cases, my client was either the United States or individual defendants sued in their individual capacities.

My areas of criminal specialization have included narcotics and other OCDEFT prosecutions (approximately 50%), health care or white-collar fraud (20%), violent crime (10%), economic and Internet fraud (10%), forfeiture and appeals (10%).

- (c) 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

Since December, 1995, when my practice became 80% criminal and 20% civil, I appear in federal court frequently. Before that date, with the exception of the criminal cases I handled, I appeared in federal court occasionally.

2. What percentage of these appearances was in:

- (a) federal court;
- (b) state courts of record;
- (c) other courts.

Federal courts account for more than 99.9% of my practice. The remaining 0.1% was the handling in state court of foreclosure and tax lien cases for other Assistant United States Attorneys in the office.

3. What percentage of your litigation was:
- (a) civil;
  - (b) criminal.

October, 1991 - December, 1992

90% civil  
10% criminal

December, 1992 - December, 1995

80% civil  
20% criminal

December, 1995 - February, 1998

20% civil

80% criminal

February, 1998 - present

100% criminal

These percentages are approximations only.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict or judgment approximately 20 cases. Eighteen of these cases, or 90%, were criminal and two, or 10%, were civil. All were in federal court.

I was sole counsel in 18 of those cases and chief counsel in the remaining 2 cases.

I have also written in excess of 50 appellate briefs with the U.S. Court of Appeals for the Sixth Circuit and have appeared before that court approximately 10-15 times for oral argument.

5. What percentage of these trials was:
  - (a) jury - 85%
  - (b) non-jury - 15%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date, if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented, describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Randall Cope, Eastern District of Kentucky, Covington Criminal No. 98-44-S. I prosecuted Cope as sole counsel on a multi-count Internet fraud and

harassment case, one of the first such prosecutions in the Eastern District of Kentucky. The indictment was returned in May, 1998. By prosecuting Cope on these charges, our office protected Sarah Jackson, a high school teacher, and her young son, the primary victims of the harassment, from the defendant. The defendant was Ms. Jackson's ex-fiancé who we proved was on a personal crusade to ruin her life, both personally and professionally. The case involved the sending of harassing and defaming e-mail messages from Canada and western Kentucky to Ms. Jackson's friends, students, and business associates in Kentucky. In March, 1999, the defendant pled guilty and was sentenced in April, 2000, to 2 years imprisonment on each count, concurrently with each other. The sentence was the statutory maximum sentence.

While the defendant was in custody awaiting sentence on the e-mail charges, he and his brother Terry Cope planned a murder for hire scheme which involved the hiring of an undercover officer to kill Ms. Jackson, her young son, and me. Although I had assisted in the investigation of the defendants in the murder for hire case, I was removed from further prosecutions after the defendants targeted me. The plan was thwarted with help of several search warrants I assisted in preparing and obtaining. Both defendants were convicted by jury trial of all but 1 count. Randall Cope received a sentence of 567 months, consecutive to the 24 month sentence received for the harassment case, for a total sentence of 591 months. Both cases are on appeal at the Sixth Circuit Court of Appeals in Cincinnati, Ohio.

The case was brought in the Eastern District of Kentucky at Covington. The presiding judge was Jennifer B. Coffman for both the e-mail case and the murder for hire case.

Opposing counsel was Harry F. Hellings, Jr., 214 East Fourth Street, Covington, Kentucky 41011, 859-431-7200.

2. United States v. Anthony Rademaker, et al, Eastern District of Kentucky, Covington Criminal Numbers 98-1, 98-6, 98-19. I prosecuted this case as co-counsel with Assistant United States Attorneys E.J. Walbourn and Fred Stine. Rademaker and his associates were responsible for distributing more than 10,000 pounds of marijuana in the Northern Kentucky/Greater Cincinnati area from 1994 to August, 1997. The case in the Eastern District of Kentucky involved 11 defendants who received sentences

ranging from 5 years probation to 210 months imprisonment. I was lead counsel on all but 2 of the defendants. Nine defendants entered guilty pleas. The 2 remaining defendants went to trial and were convicted of conspiracy to distribute marijuana. The case was significant because we were able to significantly slow the flow of a very large scale marijuana operation in our area.

Both convictions were affirmed by the Sixth Circuit Court of Appeals in Cincinnati but were remanded for re-sentencing in light of *Apprendi v. New Jersey*. See *U.S. v. Covington*, 2001 WL 302067 (6<sup>th</sup> Cir. (Ky.) Mar. 21, 2001) (unpublished). The defendants are scheduled for re-sentencing on August 20, 2001.

The case was brought in the Eastern District of Kentucky at Covington. The presiding judges were former Chief Judges William O. Bertelsman and Henry R. Wilhoit, Jr.

Opposing counsel was as follows:

Patrick J. Hanley, 214 East Fourth Street, Covington, Kentucky 41011, 859-431-7077, for defendant Anthony Rademaker;

Robert Lotz, 120 West Fifth Street, Covington, Kentucky 41011, 859-491-2206, for defendant Kenneth Wright;

Peter Swenty, 30 East Central Parkway, Cincinnati, Ohio 45202, 513-241-2540, for defendant David Durso;

Donald Nageleisen & Albert Hawes, 121 East Fourth Street, Covington, Kentucky 41011, 859-491-8887, for defendant David Kordenbrock;

Hal Arenstein, 13 East Court Street, Cincinnati, Ohio 45202, 513-651-5666, for defendant Eric Covington;

Steven Howe, 94 East Main Street, Dry Ridge, Kentucky 41035, 859-824-0500, for defendant Jimmy Klopfer;

Daniel Dickerson, 30 Shelby Street, P.O. Box 276, Florence, Kentucky 41042, 859-283-2200, for defendant Richard Hay;

Lisa C. Bushelman, 71 Cavalier Drive, Suite 103, Florence, Kentucky 41042, 859-331-3600, for defendant Brian Spaulding;

Bill Fulmer, 7289 Burlington Pike, Florence, Kentucky 41042, 859-282-3500, for defendant Beverly King;

Harry P. Hellings, Jr., 214 East Fourth Street, Covington, Kentucky 41011, 859-431-7200, for defendant Bonnie Hay; and

Deanna Dennison, 524 Greenup Street, Covington, Kentucky 41011, 859-491-3700, for defendant Jackie Hay.

3. Michelle Murray v. Tim Harris, et al, Eastern District of Kentucky, 106 F.3d 401 (6<sup>th</sup> Cir. 1997) (unpublished), Ashland Civil Numbers 93-259, 94-147. I represented twenty-two (22) defendants who had been sued in their official and individual capacities for injunctive and monetary relief respectively. Murray had alleged that during her imprisonment at the Federal Correctional Institution, Ashland, Kentucky, prison officials undertook a variety of actions which she alleged as violative of her constitutional rights. She sued under Bivens for monetary relief and also sought injunctive relief to prevent the alleged constitutional violations.

I was successful in obtaining summary judgment in favor of all but one defendant, Tim Harris. On November 29, 1994, after a 2 day jury trial, the jury returned a verdict in favor of Harris. Plaintiff appealed both the grant of summary judgment and verdict in favor of Harris. The Sixth Circuit Court of Appeals affirmed. I handled the case as sole counsel from the receipt of the complaints through trial. I also briefed and argued the case on appeal.

By consent of the parties, the presiding judge was James D. Todd, United States Magistrate Judge. The Plaintiff was pro se.

4. J.W. Dunlap v. James Fields, et al, Eastern District of Kentucky, London, Civil No. 94-53, 221 F.3d 1334 (6<sup>th</sup> Cir. 2000) (unpublished). I represented four (4) federal officers who had been sued for violating Plaintiff's Eight Amendment rights to be free from cruel and unusual punishment. Plaintiff alleged he was subjected to excessive force and sued under Bivens. A related Federal Tort Claims Action case arising out of the same incident was handled by Assistant United States Attorney Wende M. Cross, P.O. Box, 72, Covington, Kentucky 41012, 859-655-3200. Both cases were tried in February, 1998 before U.S. District Judge Jennifer B. Coffman in London, Kentucky. Jury verdict in favor of all 4 defendants. I

handled the case from receipt of the complaint through trial. I also briefed the case on appeal. The Sixth Circuit affirmed.

Opposing counsel was Thomas J. Bevans, 7934 Westview Drive, Houston, Texas 77055, 281-497-7701.

5. United States v. Larry Settle & Garnett Tuttle, Eastern District of Kentucky, London, Criminal No. 97-20-SS, 200 F.3d 892 (6<sup>th</sup> Cir. 2000). I prosecuted this multiple count "chop shop" case as sole counsel. The case involved the execution of several Kentucky state search warrants which had been obtained prior to my involvement. U.S. District Judge Jennifer B. Coffman sustained the defendants' motion to suppress evidence seized pursuant to the state search warrants. Because the crux of our case relied upon evidence seized pursuant to the search warrants, we took an interlocutory appeal to the Sixth Circuit Court of Appeals. I wrote the brief and handled the oral argument. In a published opinion at 200 F.3d 892 (2000), the Sixth Circuit reversed, finding that the search warrants were supported by sufficient probable cause and defendant Settle, as landlord of the body shop, lacked standing to contest the search. Upon remand, both defendants entered guilty pleas in June, 2000. In September, 2000, the defendant were sentenced to 13 months imprisonment and 4 years probation respectively. Defendant Settle has appealed his conviction. I am handling the appeal.

The case was brought in the Eastern District of Kentucky at London. The presiding judge was Jennifer B. Coffman.

Opposing counsel was as follows:

Tom Jensen, 303 South Main Street, London, Kentucky 40741-1906, 606-878-8845, for defendant Larry Settle;

David A. Tapp, 117 West Mount Vernon Street, Somerset, Kentucky 42501, 606-677-0833, for defendant Garnett Tuttle.

6. Lisa Fleschig v. United States, Eastern District of Kentucky, 991 F.2d 300 (6<sup>th</sup> Cir. 1993), 786 F.Supp. 646 (1991). Upon my admission to the bar, I represented the United States as co-counsel in this Federal Tort Claims Act case. Plaintiff was a federal inmate incarcerated at the Federal Medical Center in Lexington, Kentucky. Plaintiff brought suit against the United States alleging that she had been sexually assaulted by a corrections

officer in the course of being transported to a medical appointment outside the prison. In August, 1991, in the early stages of the case, and while I was still a law clerk with the U.S. Attorney's Office, I authored a motion to dismiss the complaint for another Assistant United States Attorney on the grounds that under Kentucky law, the officer was acting outside the scope of his employment when he sexually assaulted the inmate and the correctional staff was not negligent in permitting the inmate to be escorted alone by the male officer. The district court, current Chief Judge Karl S. Forester, agreed and granted our motion to dismiss. See 786 F.Supp. 646 (E.D. Ky. 1991). Plaintiff appealed. I wrote the brief on appeal. The Sixth Circuit Court of Appeals affirmed. See 991 F.2d 300 (6<sup>th</sup> Cir. 1993).

The case was brought in the Eastern District of Kentucky at Lexington. The presiding judge was current Chief Judge Karl S. Forester.

Opposing counsel was as follows:

Susan G. James & Denise A. Simmons, 600 South McDonough Street, Montgomery, Alabama 36104, 334-269-3330.

7. United States v. John Vanaman, et al, Eastern District of Kentucky, Covington Criminal Numbers 97-71-SS, 97-70, 97-103. I prosecuted this case as co-counsel in this multi-defendant methamphetamine conspiracy. Assistant United States Attorney Laura Voorhees was co-counsel. The case involved the simultaneous execution of 5 search warrants which lead to the discovery of approximately 30 pounds of methamphetamine and the prosecution of 9 defendants on multiple drug and firearm counts. Four of the defendants entered cooperative plea agreements and 5 defendants proceeded to trial. After a 2 week trial in December, 1998, the jury returned a guilty verdict on all defendants on all but one count. I also tried a criminal forfeiture count to the jury after they convicted on the predicate counts which gave rise to the forfeiture. The defendants received sentences ranging from 48 months to life imprisonment. The 5 defendants who went to trial appealed their convictions and sentences. I wrote a portion of the appellate brief and handled the oral argument. The convictions were affirmed by the Sixth Circuit Court of Appeals. See U.S. v. Vanaman, - F.3d -, 2001 WL 392006 (6<sup>th</sup> Cir. (Ky.) Apr. 11, 2001) (unpublished).

The case was brought in the Eastern District of Kentucky at Covington. The presiding judge was former Chief Judge William O. Bertelsman.

Opposing counsel was as follows:

Douglas Weigle, 121 East Fourth Street, Covington, Kentucky 41011, 859-241-3992, for defendant John Vanaman;

F. Dennis Alerding, 303 Greenup Street, Suite 300, Covington, Kentucky 41011, 859-431-8100, for defendant Enrique Ochoa;

Kurt Phillips, 2701 Turkeyfoot Road, Covington, Kentucky 41017, 859-341-1881, for defendant Jochinto Orta;

Daniel Dickerson, 30 Shelby Street, P.O. Box 276, Florence, Kentucky 41042, 859-283-2200, for defendant Jon Hambrick;

Gary Sergeant, P.O. Box 17411, Covington, Kentucky 41017-0411, 859-331-2900, for defendant Wayne McIntosh;

Lisa O. Bushelman, 71 Cavalier Drive, Suite 103, Florence, Kentucky 41042, 859-331-3600, for defendant Mary Worley;

Harry P. Hellings, Jr., 214 East Fourth Street, Covington, Kentucky 41011, 859-431-7200, for defendant Karen Sharp;

Deanna Dennison, 524 Greenup Street, Covington, Kentucky 41011, 859-491-3700, for defendant Roy Taylor; and

David Fessler, 11 West Sixth Street, Covington, Kentucky 41011, 859-291-9075, for defendant Bill Gessel.

8. United States v. Charles David Wilson, Eastern District of Kentucky, Covington Criminal Number 96-24-S. I represented the United States as lead counsel in this tax evasion case. The defendant was charged with 3 counts of evasions and 6 counts of failure to file tax returns. The case was tried in August, 1996. As a self-professed tax protestor, Wilson testified that the IRS Code made the payment of taxes voluntary. The court instructed the jury pursuant to the Supreme Court's decision in United States v. Cheek, 111 S.Ct. 604, 611 (1991) that if the jury believed Wilson's beliefs were honestly and genuinely held in good faith, however unreasonable those



beliefs were, then the government had not carried its burden of proof. The jury rejected Wilson's testimony and convicted on all 9 counts. Wilson was sentenced to a total of 33 months imprisonment and ordered to pay back taxes owed. The defendant appealed. I wrote the brief and handled the oral argument. The Sixth Circuit Court of Appeals affirmed the conviction and sentence. See, 134 F.3d 373 (unpublished).

The case was brought in the Eastern District of Kentucky at Covington. The presiding judge was former Chief Judge William O. Bertelsman.

Opposing counsel was F. Dennis Alerding, 303 Greenup Street, Suite 300, Covington, Kentucky 41011, 859-431-8100.

9. United States v. Carl Ashcraft, Eastern District of Kentucky, Covington Criminal Number 97-52-S. I was co-counsel for the United States. The case involved a defendant who kidnaped a woman and her young daughter at gun point. The kidnaping occurred in Florence, Kentucky and after a 2 weeks of forced sexual relations, the victims were able to get away in Ontario, California. The defendant was indicted on charges of kidnaping, use of a firearm during a crime of violence, and being and armed career criminal. The case involved extensive pretrial preparation of numerous witness in different locations. The defendant ultimately entered a plea of guilty to all counts of the indictment and was sentenced to 425 months imprisonment.

The case was brought in the Eastern District of Kentucky at Covington. The presiding judge was former Chief Judge William O. Bertelsman.

Opposing counsel was Steven Howe, 94 East Main Street, Dry Ridge, Kentucky 41035, 859-824-0500.

10. United States v. Naroger Carter & Allen Goree III, Eastern District of Kentucky, Covington Criminal Number 99-21. I was lead counsel in this cocaine conspiracy case. Defendant Goree was caught in a local hotel with 2 kilograms of cocaine on his person. Through extensive circumstantial evidence, we were able to tie defendant Carter to the case. Both defendants were indicted on conspiracy and aiding and abetting each other in the possession of cocaine with intent to distribute. The trial commenced in December, 1999. I was sole counsel at trial. The jury convicted defendant Goree on both counts

but hung on defendant Carter. In January, 2000, I retired defendant Carter, calling an additional witness during the second trial. I was also sole counsel for the retrial. The jury convicted defendant Carter of aiding and abetting Goree in possessing the cocaine with intent to distribute but hung on the conspiracy charge, which was later dismissed on U.S. Motion. The case was significant because we relied almost exclusively on circumstantial evidence in our case against defendant Carter. Defendant Goree was sentenced to 63 months imprisonment and defendant Carter received a 120 month sentence. Their convictions and sentences are currently on appeal before the Sixth Circuit Court of Appeals. I am co-authoring the brief on behalf of the United States.

The case was brought in the Eastern District of Kentucky at Covington. Judge Joseph M. Hood presided over the trial.

Opposing counsel was as follows:

Peter B. Coughlin, 509 East Tenth Street, Newport, Kentucky 41071, 859-431-6340, for defendant Goree; and

F. Dennis Alerding, 303 Greenup Street, Suite 300, Covington, Kentucky 41011, 859-431-8100, for defendant Carter.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or matters that did not involve litigation. Describe the nature of your participation in this question. Please omit any information protected by the attorney-client privilege unless the privilege has been waived.

In 1995 and 1998, I coordinated the Federal Bar Association's "Introduction to Federal Practice Seminar" in Covington, Kentucky. This seminar was designed to help new lawyers get acquainted to civil and criminal practice in federal court.

In June, 2000, I lectured at the Kentucky Bar Association's Annual Conference in Covington, Kentucky on the Federal Sentencing Guidelines.

In May, 1995, I lectured to a group of U.S. Department of Justice lawyers on various prisoner's rights issues. I also gave the participants tips on trying Bivens cases in federal court.

In June, 1994, I lectured at the Kentucky Jailers Conference in Owensboro, Kentucky on transfer of inmate custody issues between state and federal law enforcement officers.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no sources or amounts of income or anticipated receipts of income of any kind.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

In identifying and resolving any potential conflicts of interest, I will follow the Canons of Judicial Ethics and 28 U.S.C. § 455. Judges should perform their duties impartially and diligently. To that end, I will disqualify myself in any proceeding in which my impartiality might reasonably be questioned.

The categories of litigation that may present potential conflicts of interest during my initial service as a United States District Judge are those in which the United States is a party. If I have personal involvement or knowledge of disputed facts, I will recuse myself. I also would recuse myself in any proceeding where I may have been counsel of record prior to my appointment.

In all cases where recusal may be contemplated, I would make full disclosure to all counsel and parties and comply with 28 U.S.C. § 455.

Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rent, royalties, patents, honoraria, and

other items, exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for)

See attached Financial Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Beginning in 1979, I have walked precincts for candidates in local, state, and federal races. Although I have never held an official position in any campaign, in 1986 I did assist my twin sister Amy in getting out the vote at the University of Kentucky for my father, Jim Bunning, who was running for his first term in Congress.

In 1979, I walked precincts and handed out campaign literature for my father, a successful candidate for Kentucky State Senate.

In 1983, I walked precincts and handed out campaign literature for my father, an unsuccessful candidate for Kentucky Governor.

In 1986, 1994, & 1996, I walked precincts and handed out campaign literature for my father, a successful candidate for Congress.

In 1994, I walked precincts and handed out campaign literature for Katie Stine, a successful candidate for Kentucky House of Representatives; and Fred Stine, a successful candidate for County Coroner.

In 1998, I appeared at candidate forums as a surrogate for my father on a couple of occasions during his successful campaign for the U.S. Senate. I also introduced my father at several locations throughout Kentucky during the campaign bus tour the week before the election in November, 1998. I also walked precincts and handed out campaign literature for him during the 1998 campaign. I also appeared in campaign commercials with the rest of my family.

In 1998, I also walked precincts and handed out campaign literature for Katie Stine, a successful candidate for

Kentucky State Senate; Mark Schweitzer, my college roommate and a successful candidate for County Coroner; Steve Pendery, a successful candidate for County Judge Executive; and Jim Stegman, an unsuccessful candidate for County Commissioner.

In 2000, I walked precincts and handed out campaign literature for George Bush & Dick Cheney; Don Bell, an unsuccessful candidate for Congress; and Eric Stineman, an unsuccessful candidate for Fort Thomas, Kentucky, School Board.

FD-278 (Rev. 1-2000)

# FINANCIAL DISCLOSURE REPORT

## Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-113).

1. Person Reporting (Last name, first, middle initial) Mung, David L.	2. Court or Organization U.S. District Court, SD-NY	3. Date of Report 08/03/2001
4. Title (Article II judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (nominee)	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 08/02/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 08/03/2001
7. Chambers or Office Address 513 Madison Ave. Suite 400 P.O. Box 72 Covington, NY 41012-0072	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

9. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)	
POSITION	NAME OF ORGANIZATION / ENTITY
NONE (No reportable positions.)	
1. NONE	
2.	
3.	

10. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)	
DATE	PARTIES AND TERMS
NONE (No reportable agreements.)	
1. NONE	
2.	
3.	

11. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)		
DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
NONE (No reportable non-investment income.)		
2000-present	Jim Bunning Foundation, Controller	

FINANCIAL DISCLOSURE REPORT Name of Person Reporting: Bunning, David L. Date of Report: 78/03/2001

**IV. REIMBURSEMENTS** — transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 15-18 of instructions.)*

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 19-22 of instructions.)*

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 23-25 of instructions.)*

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
	Thrift Savings Plan	TSP LOAN	

DES: I=\$15,000 or less    X=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 0=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more



FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Dunning, David L.		Date of Report 08/03/2001				
VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions <i>(Includes those of spouse and dependent children. See pp. 36-34 of instructions.)</i>								
A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period	D. Transactions during reporting period					
Place "X" after each asset exempt from prior disclosure.	(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method (e.g., buy, sell, partial sale, merger, redemption)	(1) If not exempt from disclosure Date: Month- Day	(2) Value: Gain Code (J-P)	(3) Identity of buyer/seller Code (A-H)	(4) If private transaction
	NONE (No reportable income, assets, or transactions.)							
1 Roth IRA - Washington Mutual Investors Fund - Class A	A	Dividend	J	T	Exempt			
2 Roth IRA - New Perspective Fund - Class A	A	Dividend	J	T	Exempt			
3 Roth IRA - Europacific Growth Fund - Class A	A	Dividend	J	T	Exempt			
4 Roth IRA - SMALLCAP World Fund - Class A	A	Dividend	J	T	Exempt			
5 Roth IRA-Washington Mutual Investors Fund-Class A	A	Dividend	J	T	Exempt			
6 Roth IRA - New Perspective Fund - Class A (Spouse)	A	Dividend	J	T	Exempt			
7 Roth IRA - Europacific Growth Fund - Class A (Spouse)	A	Dividend	J	T	Exempt			
8 Roth IRA - SMALLCAP World Fund - Class A (Spouse)	A	Dividend	J	T	Exempt			
9 Education IRA - New Economy Fund - Class A (daughter)	A	Dividend	J	T	Exempt			
10 Education IRA - New Perspective Fund - Class A	A	Dividend	J	T	Exempt			
11 Education IRA - SMALLCAP World Fund - Class A (daughter)	A	Dividend	J	T	Exempt			
12 Education IRA - New Perspective Fund - Class A	A	Dividend	J	T	Exempt			
13 Education IRA - SMALLCAP World Fund - Class A (son)	A	Dividend	J	T	Exempt			
14								
15								
16								
17								
Inco-Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more Val. Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 C, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more Val. Meth. Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market Col. C2) U=Book Value V=Other W=Estimated								

	Name of Person Reporting	Date of Report
FINANCIAL DISCLOSURE REPORT	Sunning, Jarvis L.	28 11 2001
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.		
<i>(Indicate part of report.)</i>		
All mutual funds owned are part of the American Funds family.		
PART 7: re: asset no. 5 is owned by my spouse.		
PART 7: re: asset no. 10 is in the name of one my daughters.		
PART 7: Re: asset no. 12 is in the name of my son.		

1075

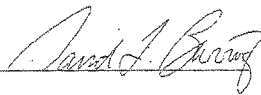
	Name of Person Reporting	Date of Report
FINANCIAL DISCLOSURE REPORT	Bunning, David L.	03/23/2001

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. App. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

8/3/01

Note: Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 504).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS (as of 7/31/01)		LIABILITIES (as of 7/31/01)	
Cash on hand and in banks, credit unions	500.00	Notes payable to banks-secured (Appliance "Same as Cash" Loan)	1,100.00
U.S. Government securities-add schedule	0.00	Notes payable to banks-unsecured	0.00
Listed securities-see attachment (Roth IRAs, Education IRAs)	13,820.11	Notes payable to relatives	0.00
Unlisted securities--add schedule	0.00	Notes payable to others	0.00
Accounts and notes receivable:	0.00	Accounts and bills due	0.00
Due from relatives and friends	0.00	Unpaid income tax	0.00
Due from others	0.00	Other unpaid income and interest	0.00
Doubtful	0.00	Real estate mortgages payable (1 <sup>st</sup> Mortgage - Wells Fargo) (2 <sup>nd</sup> Mortgage - Citizens Bank of Campbell County, Kentucky)	123,750.00
Real estate owned Primary Residence at 153 Ohio Ave. (value based on 1999 appraisal)	140,000.00	Chattel mortgages and other liens payable	0.00
Real estate mortgages receivable	0.00	Other debts-itemize:	
Autos - 1994 Toyota Camry	7,000.00	Providian Master Card	6,439.81
Other personal property - appliances, jewelry, clothing, etc. (Approximation only)	10,000.00	Capital One Visa	2,763.77
Cash value-life insurance	0.00	Cinfed Credit Union (Camry Loan)	1,200.00
Other assets itemize:		TSP Loan	14,000.00
		University of Kentucky Student Loan	205.00
TSP 401K	88,222.84		
<b>Total Assets</b>	<b>259,542.95</b>	<b>Total liabilities</b>	<b>149,458.58</b>
		<b>Net Worth</b>	<b>110,084.37</b>
		<b>Total liabilities and net worth</b>	<b>259,542.95</b>
<b>CONTINGENT LIABILITIES</b>		<b>GENERAL INFORMATION</b>	
As endorser, cosigner or guarantor	0.00	Are any assets pledged? (Add schedule)	No
On leases or contracts	0.00	Are you defendant in any suits or legal actions?	No
Legal Claims	0.00	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0.00		
Other special debt	0.00		

## Listed Securities Schedule (as of 7/31/01)

## Roth IRA - spouse

American Funds - EuroPacific Growth Fund - Class A -	56.823 shares
American Funds - New Perspective Fund - Class A -	75.622 shares
American Funds - SMALL CAP World Fund - Class A -	47.693 shares
American Funds - Washington Mutual Investors Fund - Class A -	55.542 shares
Total Value	<u>\$6,115.56</u>

## Roth IRA - nominee

American Funds - EuroPacific Growth Fund - Class A -	45.438 shares
American Funds - New Perspective Fund - Class A -	66.832 shares
American Funds - SMALL CAP World Fund - Class A -	29.628 shares
American Funds - Washington Mutual Investors Fund - Class A -	41.950 shares
Total Value	<u>\$4,762.73</u>

## Education IRA - daughter

American Funds - New Perspective Fund - Class A -	36.661 shares
American Funds - SMALL CAP World Fund - Class A -	19.112 shares
Total Value	<u>\$1,279.54</u>

## Education IRA - son

American Funds - New Perspective Fund - Class A -	36.639 shares
American Funds - SMALL CAP World Fund - Class A -	19.081 shares
Total Value	<u>\$1,278.32</u>

## Education IRA - daughter

American Funds - New Economy Fund - Class B -	19.431 shares
Total Value	<u>\$383.96</u>

Total Listed securities\$13,820.11

III. GENERAL (PUBLIC)

1. An ethical consideration under canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each instance.

I have served the disadvantaged as a volunteer at the Parish Kitchen in Covington, Kentucky, from 1992 to the present. Four times per year from 1992 to 1996 and approximately once per month since 1997, I have assisted other professionals in preparing the noon-time meal for disadvantaged persons.

From approximately 1993 to 1996, I was an adjunct board member for the Family Nurturing Center of Kentucky, a non-profit agency whose purpose was to better the lives of disadvantaged and abused youth. The adjunct board primarily was a fund-raising board to help raise funds for the Center's programs.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not belong to any organization which discriminates in any way. Therefore, the second part of this question need not be answered.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is not a selection commission in my jurisdiction. I was interviewed in March, 2001 by White House Counsel Justice Alberto Gonzales and White House Counsel Staff. I was also interviewed by Jim Ho with the Department of Justice in July, 2001. I participated in an FBI background check and completed various forms, culminating in my nomination on August 2, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal Government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal courts are courts of limited jurisdiction. Courts should decide cases based upon the narrowest applicable grounds and should always address threshold questions, such as standing or ripeness, before reaching the merits of the particular issue. Judges should apply the least invasive measures necessary to provide the prevailing party with an adequate remedy.

As one of three co-equal branches of government, courts should be mindful to not usurp the authority of the legislative or executive branches. Setting the policy and making the law is the proper function of the elected members of the legislative and executive branches. When courts override the legitimate policy decisions of the legislative or executive branches of government, they override their constitutional authority. The function of the courts should be limited to finding and interpreting the applicable law and applying it to a particular set of facts and circumstances.



Chairman LEAHY. Thank you. Mr. Bunning, you have heard the opening statements of Senator Hatch and Senator McConnell and mine. I should note that Senator McConnell and Senator Bunning have spent a lot of time talking to me about your nomination. They have been very strongly supportive of you, as has Senator Hatch.

But as you know, later on today, the ABA will testify and state its concerns regarding your qualifications for the Federal bench. They will say you do not have sufficient experience. Of course, after they testify, I am going to keep this record open. Obviously, anything that is said here, you can add to your own testimony. You are going to be allowed to the testimony given by anybody else, as they would of yours. But anticipating the ABA testimony, is there anything you would like to say about it?

Mr. BUNNING. Thank you, Mr. Chairman. I appreciate the opportunity to respond to the concerns of the ABA, which I know are also of concern to this Committee. I would also like to thank the ABA for sharing their concerns with Senator McConnell's staff prior to today so that I might have an adequate time to respond.

As it has been explained to me, there are four areas of concern that the ABA is raising. First, my years of experience, or what is commonly referred to as the 12-year-rule that they have. Secondly, my level of civil experience. Thirdly, the fact that I have spent my entire legal career as an Assistant U.S. Attorney in the U.S. Attorney's Office. And fourthly, the fact that I have spent the bulk of that time in a satellite office within the U.S. Attorney's Office.

Briefly, if I may, I believe that the nature and depth of a nominee's experience are more relevant than the amount of time I have been a lawyer. I have had the high honor and privilege of representing the United States in both civil and criminal litigation for the past ten years. I took an oath in 1991 to uphold the Constitution and I have worked diligently and tirelessly over the past ten years to do that.

As Senators McConnell and Hatch have stated, I have handled many, many cases. I have handled approximately 130 civil cases, approximately 400 criminal cases, all in the very court that I have been nominated to sit as a judge. I have handled many oral arguments with the Sixth Circuit Court of Appeals and I have had the opportunity to spend many years in the well of the very court that I have been nominated to sit.

I believe that I have had—it has given me the opportunity, working for the U.S. Attorney's Office, to have a lot of experience in dealing with Federal rules of evidence, sentencing guidelines, and their application and interpretation in the very same way that a U.S. District Judge would.

Although I have had only one client, that is the United States, that client has taught me to respect the rule of law, and I believe I have done that over the past ten years.

With respect, briefly, to the issue of my civil litigation experience, I have set forth some of the significant cases in my questionnaire. I have handled for approximately four years a wide variety of civil litigation that Senator Hatch has already stated, and I believe that although it goes back a few years, I am very proud of my record in handling Federal constitutional law issues, *Bivens*

1983-type actions, in the very same way that U.S. District Judges in our District handle on a routine basis.

I believe my time in the U.S. Attorney's Office has enabled me to handle cases from investigation through indictment, through trial, writing the brief on appeal, and then handling the oral argument. The nuts and bolts practical experience I had will serve me well if I am fortunate enough to be confirmed by the Senate.

I believe that one of the important qualities of a District Judge is to be able to create a record, a factual record which will withstand appellate scrutiny. Myself as a litigator for the past ten years, I have tried very hard to make sure that record is sufficient, and I believe I have a lot of experience in making sure that the record would be upheld on appeal, because no one wants to try a case twice.

Finally, the issue about the satellite office that Mr. Weiner has raised. I believe that that has taught me to have a lot of autonomy and I believe that the level of supervision that I have had in the satellite office has been very intense. My direct supervisor for the last six years did have a very hands-off approach and that taught me a lot. I was able to grow as a lawyer.

And I believe that being in the satellite office, I analogize it to handling many, many different types of cases, and if I would use a doctor analogy, handling broken arms through brain surgeries. We have to handle, and I know you are aware of this, being a prosecutor prior to you becoming a Senator, you handle all types of cases, large and small, routine to complex, and I believe my experience from the last ten years has enabled me to be before you today. Thank you.

Chairman LEAHY. You just mentioned, in my case, like many others in the Senate, I was formerly a prosecutor, as you are. As a prosecutor, of course, you have the people as your client. I happen to feel that being a prosecutor is one of the finest areas of public service, because you do represent the people. That means you have got to be an advocate for your client. You have got to make sure, as you just said, that you do not make mistakes so that it does not get overturned on appeal. Every prosecutor knows that if five years later you have got to retry a case, you will have to start looking for a plea bargain because usually you have got witnesses missing, evidence missing, all the other problems that go with doing it.

But if you go from being an advocate for the government, and when your client is in this case the people of the Commonwealth or the people of the United States, how do you go from that to being a neutral decision maker? For example, Federal Courts, a lot of criminal cases, as you know, and the judge has to be there not as an advocate of either the defendant or the government. With the number of years as a prosecutor, are you able to make that transition?

Mr. BUNNING. Mr. Chairman, I believe that the rule of law is something that I have strived to achieve over the last ten years. I believe that working for the Department called Justice has taught me—has given me unique opportunities to make sure that justice is achieved in every case.

We have the unique opportunity in the U.S. Attorney's Office to make sure that justice is achieved, whether that means not presenting an indictment to a grand jury, whether it means telling an agent who is in my office that I do not believe there is probable cause to obtain a Federal search warrant.

I have had the opportunity to use prosecutorial discretion and objectivity for the U.S. Attorney's Office, and if I am fortunate enough to be confirmed by the Senate, I will have just one client, and that is making sure that the rule of law is followed. I have spent ten years advocating that it be followed and I believe I have a unique perspective in handling issues which would come before me and making sure that justice is achieved in every case, and I will work tirelessly to make sure that happens.

Chairman LEAHY. Mr. Bunning, you also in your earlier statement talked about wanting to make sure that a case when it goes up on appeal, as so many do, that you have not made mistakes. I am speaking in your role as a prosecutor, not made mistakes so that the case does not get overturned. As a District Judge, of course, you always face the fact that—well, not always face, do face the fact that one of the litigants is not going to be happy. I recall once saying to a defense counsel when I was a prosecutor as we were about to go to the jury, I said, "Well, let us turn to the jury and let justice be done." He said, "Well, if that happens, we will appeal."

[Laughter.]

Chairman LEAHY. But you are always going to have one side or the other is going to want to appeal, and so the decisions you make are going to be extremely important, not just for the decisions you make as you go along in a trial, when we have to make rulings, admissions of evidence, objections, and so forth, even the amount of time an attorney might be allowed to continue with a witness, but there are going to be a lot of things where you are going to have to rule on matters of law and how that is written is going to be the subject of an appeal, certainly on a trial by court, definitely, but even in trials by jury, you are going to be making rulings that are going to be part of the appellant's brief.

Now, the ABA has spoken of your writing, and to the extent you do writing now, obviously, the Court of Appeals will set a lot of precedent, but you are going to shape that precedent. And to the extent that they do not write, if you write a decision, that can be controlling in the Eastern District.

You have had a relative lack of complex cases. Do you feel you could take on the writing responsibilities of a Federal Judge?

Mr. BUNNING. Thank you for that question, Mr. Chairman. I believe my writing style throughout the past ten years, like any good lawyer, has progressed over time. In 1991, when I went to the civil advocacy class sponsored by the Department of Justice, and I cannot remember which Federal Judge told me this, but she stated that when you write, your legal writing, be very concise and get to the point, and I believe that whether your writing involves a complex case or one that requires a two- or three-sentence memorandum or two- or three-page memorandum opinion, I believe that I will be able to analytically review issues of law.

I have done just that over the past ten years, and I think that most Federal District judges, at least when I have been advocating positions in memoranda, like brevity and like you to state the facts of the law, apply those facts to the law, and then draw a conclusion, because I think at the appellate level, it is always easier as an advocate to argue your position when the District Court's opinion is very clear as to what issues of law control and why the conclusion was drawn.

Chairman LEAHY. In a way, this is sort of an obverse of questions we often ask nominees here who have had extensive civil practice, if they are going on the Federal bench, how they are going to handle a criminal practice. In a way, I am asking you the obverse of that.

The civil matters, you litigated civil matters for four of your ten years in legal practice and the ABA, that is one of the concerns they have expressed. Federal Court dockets are overflowing. Certainly, they are in my State. I am sure they are in the Commonwealth of Kentucky and elsewhere with a lot of complex civil cases. You have got employment, voting rights discrimination, antitrust, a lot of large-scale class litigation which will go to the Federal Courts.

Do you feel prepared to handle complex civil cases and still manage what I assume will be a very busy docket of both civil and criminal cases? Can you handle it? Do you feel that you are qualified to handle the complex antitrust case or voter discrimination case if it lands in your lap?

Mr. BUNNING. I have had the experience to handle a wide variety of cases over the last ten years. I have not handled a voting rights action case and I have not handled an antitrust action. I have tirelessly researched the law and advocated positions based on my research. If confirmed by the Senate, I will work just as tirelessly and with every ounce of my being, enthusiastically, to handle every issue which comes before me.

I am very proud of my civil background. It is a few years ago. I did have the opportunity to handle some age discrimination cases. I have handled some Federal Tort Claims Act cases. At the end of the day, there is going to be, at least with respect to Federal questions, there is going to be a statute that controls, and in most cases, controlling precedent interpreting that statute for you. I am bound to follow those precedents and I will do so if confirmed.

Chairman LEAHY. I assume that you would not in any way disagree with the fact that if there is a Court of Appeals decision for your circuit or a U.S. Supreme Court opinion on a matter, you are bound by that precedent. Whether you agree or disagree with it, you are bound by that, is that correct?

Mr. BUNNING. Absolutely.

Chairman LEAHY. Unfortunately, as you know, there are a lot of novel theories that come up and you are going to find a lot of cases that there is no opinion on all fours. Sometimes there will be no precedent that even comes too close to it. I think in the past few years, the Supreme Court has struck down a number of Federal statutes, where the Congress has enacted a law, the Supreme Court has knocked it down, and several designed to protect civil rights and prerogatives of what many of us felt were our more vul-

nerable citizens, the Supreme Court has said that is beyond Congress's power under Section 5 of the 14th Amendment. They have also struck down statutes being outside the authority of Congress under the Commerce Clause.

These cases taken as a whole have been described as creating new power for State governments, or as Federal authority is being diminished. At the same time, the courts issued several decisions, most notably in the environmental arena, to give States a lot more power and authority over the use of land and water, even though there has been longstanding Federal protection of the environment, the idea that air does not stop at a border of a State and waters do not and so on.

Many writers have said these cases, taken collectively, or taken individually even, they raise concerns about the limitation on Congressional authority, or collectively, it may be a new kind of federalism crafted by the Supreme Court that may alter fundamentally the structure of our government.

Understanding fully, of course, you are bound by the precedents of the Supreme Court, have you looked at this trend in the Supreme Court and do you have a view as to that trend?

Mr. BUNNING. I am familiar with some of the Supreme Court cases that you have mentioned, Mr. Chairman. As a U.S. District Judge, if confirmed, obviously, I am bound by the precedents established by the Sixth Circuit Court of Appeals and the Supreme Court. The separation of powers has worked well for many, many years and I think that I know the role of a judge and I also know that those precedents are controlling and I do not really have any—my personal beliefs or what I may think Congress should or should not do will not impact me as a judge because that is your role and the members of this Committee and the members of the Congress's role to create the laws. I am fully aware of that and I believe that to the extent that there are cases by the Supreme Court or the Sixth Circuit interpreting the Commerce Clause, equal protection under the 14th Amendment, I will be bound to follow those precedents.

Chairman LEAHY. What if Congress, and think for a moment on this if you want to answer if, if Congress provided money to a State on the condition that the State use the money in a certain way. Can Congress constitutionally require a State to accept such funding, to waive its sovereign immunity to private actions for money damages if the State is found to be misusing its funds?

Mr. BUNNING. Mr. Chairman, that is an area that I have not had a whole lot of experience in, to be candid with you. I would thoroughly research that issue, and I am sure if the Supreme Court has ruled or the Sixth Circuit has ruled on that very issue, I will follow that. I am somewhat of a computer pack rat and I am fairly proficient with legal research and writing and I believe that I would find the precedent and I would, of course, follow it if there is such precedent.

Chairman LEAHY. I might say as an aside, the computer is a little bit different than in the days when Senator Hatch and I were first practicing law and had to Shepardize our cases in dusty old books. I recall my days as a prosecutor, being in the law library until three or four o'clock in the morning researching appellate

cases and going up and trying murder cases at nine o'clock the same morning. I am finding the computer is a lot—well, it is a different matter.

Senator HATCH, before we start down the coastal highway of reminiscences of the older members of the Committee, I will yield to you.

Senator HATCH. I am glad we are avoiding the coastal highway, is all I can say.

[Laughter.]

Senator HATCH. Mr. Bunning, approximately how many cases have you handled in your little over ten years of practice?

Mr. BUNNING. Approximately 130 civil cases and approximately 400 criminal matters, all in Federal Court.

Senator HATCH. Can you tell us about any complex litigation cases that you handled?

Mr. BUNNING. Thank you, Senator Hatch. Lawyers can disagree on what complex means. I have handled several, on the criminal side, several multi-defendant, multi-layer conspiracy cases, the very types of cases that, at least on the criminal side of the fence, are handled in the Eastern District of Kentucky involving numerous constitutional issues, both pre-trial and post-trial.

On the civil side, I believe you mentioned the one particular case where I had 22 individual defendants who had been sued under *Bivens*. We ultimately went to trial and we were successful obtaining a verdict for the one remaining defendant, and that is the *Murray* case mentioned in the materials.

Another civil case which you mentioned, I believe is appropriate, is the Lisa Fleschig FTCA case which I handled while I was still a law clerk for another AUSA, and that is a published opinion and you have that in the material, as well.

But with respect to the complexity of the issues, I have handled numerous, what I would consider complex criminal cases for the Eastern District of Kentucky.

Senator HATCH. Would you mind telling the Committee what your Martindale-Hubbell rating is?

Mr. BUNNING. It is "BV," which is, I believe, the middle of the three ratings.

Senator HATCH. It is the highest rating that a young lawyer can have between five—you cannot get it until after you have been in the practice for five years, and if I recall it correctly, between five and ten years, it is the highest rating any lawyer can have.

Mr. BUNNING. Thank you.

Senator HATCH. And then after ten, hopefully you can work on getting an "AV" rating. But that speaks pretty well of you, that you had a "BV" rating—

Mr. BUNNING. Thank you.

Senator HATCH. —meaning the highest rating by your peers in that area by the most important rating system that we have in the law today. I wanted to point that out, because it is my understanding that you did.

I note that you have spent virtually your entire career as a litigator in the Federal Courts, and as a result, I expect that you have had significant experience dealing with the rules that govern proceedings in Federal Court, such as the Federal Rules of Evidence,

the Federal Rules of Civil and Criminal Procedure, and the Federal Sentencing Guidelines. How will you benefit as a Federal judge from your extensive experience with these rules?

Mr. BUNNING. I believe my experience in the interpretation and application of all those rules that you mentioned will be of great benefit to me. I understand the nuances of the sentencing guidelines. I was fortunate enough in the year 2000 to be asked by the Kentucky Bar Association to lecture to the KBA on guideline issues. I was very proud of being asked to do that as a member of the bar in Covington, Kentucky.

Evidentiary rules are, like anything else, the more you deal with them in the well of the court, the more familiar you are, and I have had a lot of experience in the middle of trials litigating, or advocating, if you will, the Federal Rules of Evidence, and I believe that will be a great benefit to me. Knowing the practices and the procedures in both civil and criminal cases in the Eastern District of Kentucky will be of a great benefit to me, if confirmed.

Senator HATCH. Now, I understand that there has been an allegation that your experience has revolved almost exclusively around criminal law. I note, however, that you spent the first four years of your career as an Assistant U.S. Attorney in the Lexington office of the Civil Division handling a diverse array of cases. Even after you were transferred to the Covington office in 1995, you continued to handle civil matters until 1998. Can you provide us with some details about your civil litigation experience?

Mr. BUNNING. Thank you. I have handled approximately 130 Federal civil cases, ranging from *Bivens* type actions to Federal Tort Claims actions to handling age discrimination cases, and for the most part, many of those Federal constitutional law issues—the *Bivens*, the 1983 type actions, were the very same cases that make up a large percentage of the docket for Federal judges in the Eastern District of Kentucky. And while I have defended the individuals who have been accused of using excessive force, for instance, I am familiar with that area and I believe that will be a great benefit to me, if confirmed.

Senator HATCH. Thank you. Now, one of the criticisms that has been levied against you is that you graduated from the University of Kentucky Law School in the middle of your class. I personally am truly disappointed by this criticism, as I feel strongly that a solid quality legal education is available at our country's State universities.

Senator MCCONNELL. I might say, as another UK Law graduate who graduated in the middle of his class, I thought it stung a little bit, too.

[Laughter.]

Senator HATCH. Maybe I should not ask the rest of this question. I think it would sting anybody.

[Laughter.]

Senator HATCH. I used to be proud of saying that I never lost a case to some of these so-called heralded elite law school graduates.

Chairman LEAHY. Moving right along—

[Laughter.]

Senator HATCH. I am concerned that this criticism reflects a degree of elitism, so I want to ask you the following question. Do you

feel at all disadvantaged for having graduated from a State law school?

Mr. BUNNING. Absolutely not, Mr. Chairman. The University of Kentucky, and there will be some who disagree, but I believe it is the flagship law school in Kentucky. We do have three very wonderful law schools in the State and I am very proud of having graduated from UK in Lexington. We do have—it is my understanding, and I may get it wrong, but I know several of the current Federal bench and the District Court bench graduated from Kentucky. I believe that is correct. I think you may ask them why they are—I am sure they will remember where they went to law school. You could ask them that later.

Senator HATCH. Between you and me, I think it is the student a lot more. The law school is important, but the student is even more important.

Frankly, I am proud of the record you have, and we have put young people on the Federal bench. You have over ten years. Now, I admit that the American Bar Association likes a 12-year rule, but we have ignored that rule from time to time, especially when you have the litigation experience that somebody like you has had, and not just criminal, but civil, as well. So I just want to compliment you. I believe you will make a wonderful District Court judge and I think you will bring a vibrancy to the bench that will be very much appreciated by those of us who work with the Federal judiciary at all times.

I have been here 25 years and there is nobody who loves the Federal judiciary more than I do, nobody. I respect these judges. I would not recommend anybody to become a Federal District or Circuit Court judge or a Supreme Court judge who I did not feel had the capacity to do that job, because the work that you do is so important for this country. I personally believe that the judiciary, that third branch of government, that sometimes is disparaged by people in our society, has done more to save the Constitution and to protect our way of live than any of the three branches. That does not negate the fact the other two branches have done some very good things, but you are about to go into a position that really makes a difference in this world.

I, for one, am very proud of what you have been able to accomplish during your years. I have to say that those who want to disparage any aspect of your experience ought to look at that “BV” rating. That is by peers and it is a very small percentage of lawyers who get that after five years of practice of law. It is a very high rating. I think that should stand you in very good stead in anybody’s eyes, because those are secret ballots for Martindale-Hubbell. You do not know who is voting for you. You do not know who they sent questionnaires out to. So these are your peers who really have no reason to do anything but tell the truth.

I am very proud to support you in this matter and I wish you well as you become confirmed.

Mr. BUNNING. Thank you.

Senator HATCH. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator McConnell?



Senator McCONNELL. Mr. Chairman, the Senator from Alabama has got another place he needs to go here shortly, so if you do not mind, I am going to allow him to—

Chairman LEAHY. I am always happy to accommodate my friend from Alabama.

Senator McCONNELL. I will yield my time.

Senator HATCH. If my friend from Alabama would yield, Mr. Chairman, I have another appointment I have to go to, but I just want to thank you for holding this hearing once again. I appreciate your effort in this regard and appreciate the effort of my colleagues.

Chairman LEAHY. And I would just note, so that people can plan, when we finish the questioning of the witness, we will take about a three-minute break before we bring up the next panel.

The Senator from Alabama.

#### **STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Mr. Chairman, I know I am biased, having served as an Assistant U.S. Attorney and as United States Attorney for 12 years, really 15 years, in the Department of Justice doing much of the same kind of work that this nominee has. I recognize the Bar Association does worry about the rule for years of practice and I understand that that is a good rule and ought to be looked at, but it is not an iron-clad rule, as we all know.

Honestly, the kind of experience this nominee has is extraordinary. He has worked full-time before the very judges that he will be serving with. Remarkably, three of them are here today to testify to his competence, his former United States Attorney boss, who was appointed by President Clinton, also supports his nomination.

Unlike some Assistant United States Attorneys in a big office who may have tried one or two big cases over a period of time in a rarified atmosphere, this nominee has tried civil cases, medical malpractice civil cases, complex *Bivens* cases involving a lot of money against the United States Government, a host of those kinds of cases which, I think, indicates that he had to master the Rules of Evidence, the Civil Rules of Evidence.

He also has handled quite a number of major criminal cases and did OCDETF work, which is the Organized Crime Drug Enforcement Task Force cases. Fifty percent of his criminal work has been OCDETF cases. These are the most complex drug cases. Many of those involve multi-district, multi-defendant situations. He has prosecuted health care fraud cases, all of which are complex, white-collar fraud cases, economic and Internet fraud cases. I think that is important.

So he has learned criminal rules and the criminal procedures, and I would certainly suggest that Sentencing Guidelines are a significant issue for a Federal judge. They are complex and it takes some time to get a handle on them. Obviously, based on his experience, he will hit the ground running with those issues with no problem.

As Chairman Hatch noted, I thought it was particularly noteworthy that during the time he has been trying these cases, he has been advising agents—I will just ask you this, Mr. Bunning. Do

you have agents and investigators talk to you on a pretty regular basis, in your office?

Mr. BUNNING. Senator Sessions, that is correct. They call and if we happen to be the one that answers the phone that day, we answer their question.

Senator SESSIONS. And you give them legal advice. They come into your office and ask legal advice. You have to meet with them to prepare for cases, talk to witnesses, interview witnesses and do those kinds of things.

Mr. BUNNING. That is correct.

Senator SESSIONS. But at the same time he is doing all that and trying cases, he has written 50 appellate briefs to the Sixth Circuit Court of Appeals, personally written those briefs, and appeared before the Court of Appeals ten to 15 times. That is a real tough thing.

And in the course of that, I would suggest that a young lawyer quickly learns what goes on in the courtroom, what goes on outside the courtroom with law enforcement officers. He understands that, and also learns how to simplify and identify key issues on appeal, key issues that will come forth on appeal.

I was impressed that of the 20 jury trials he has tried, he did 18 of them as sole counsel. That is the way we did in my office. It is real productive for the taxpayers, frankly. In big offices, they will have three lawyers trying cases. A new one is supposed to sit there and, I guess, absorb the practice. But in the real world out there where you have a small office, you are trying those yourself and you have to stand before that judge, argue your motions on evidence, argue your exclusionary motions, argue the motions to dismiss, and learn about lawyers.

So I just think it is an exceptionally good background for a Federal Court judgeship, particularly when he has done civil and criminal cases. I see you are smiling.

Chairman LEAHY. No, I was just thinking, being just a small town lawyer myself, I never knew you were able to have a second counsel there.

[Laughter.]

Chairman LEAHY. I thought you had to do everything from discovery to prepare the case, try it, and take it up on appeal. So I am glad I have been here today. I have learned something.

Senator SESSIONS. It is not that way in the big offices, truly.

And I was impressed. I like the letter from your self-described liberal Democrat. He said you have integrity, fairness, and no hint of aloofness. I hope you will not lose that just because you are anointed.

Mr. BUNNING. Senator Sessions, with having three small children, my feet are firmly planted on the ground.

[Laughter.]

Senator SESSIONS. I think that is important, and I think we need to be—I think experience is important in a judge, but I would just say, having the support of the judges before whom you prosecute and the intensity of the experience you have had, if you had dictatorial qualities, if you had qualities that indicated incompetence or lack of integrity or a lack of commitment to the rule of law, if

you could not have gotten along with your lawyers on the other side, we would know it by now.

I think, based on that unique experience you have had, I think we are looking at a good nominee, Mr. Chairman, and I thank you very much for allowing this hearing to occur.

Chairman LEAHY. Thank you, Senator Sessions. I appreciate that.

Senator McConnell?

Senator MCCONNELL. Mr. Chairman, we are almost to the point here with this nominee where everything has been said but not everyone has said it. There is one area that I wanted to probe just a bit and that is in Mr. Weiner's report, the satellite office seemed to be an issue. I am not sure whether it was an issue because the argument was that you were unsupervised or over-supervised. You had said, I think, that your boss had a "sort of hands-off approach to management," but I gather you did not mean there was no supervision whatsoever.

Mr. BUNNING. Senator McConnell, that is absolutely correct. The nice thing about being in the satellite office was the opportunity for consultation and supervision was always there, and I am fortunate enough, my immediate supervisor for more than the last six years, E.G. Walburn, is a fabulous lawyer who knows more about the Federal Rules of Evidence than any lawyer that I know. I have been able to draw on his experience—

Senator MCCONNELL. In fact, he was a former Kentucky Lawyer of the Year, was he not?

Mr. BUNNING. That is my understanding.

Senator MCCONNELL. Yes. I am sorry. I did not mean to interrupt you.

Mr. BUNNING. In the satellite office, we spent many times discussing nuances of the Federal Rules of Evidence. The level of supervision, now while I did not have constant supervision with respect to every single decision that I would make, my indictments that were prepared to be presented to a grand jury were always reviewed by my immediate supervisor and Mr. Famularo, while he was the U.S. Attorney. My appellate briefs were reviewed by Mr. Walburn and by an appellate chief in Lexington. While I handled and wrote the briefs myself, they were always reviewed.

And the level of supervision we got was intense when it was needed, and I think I did tell Mr. Weiner that it was hands-off, but I think it enabled me to grow as a lawyer and make decisions on my own, which I think, obviously, if fortunate enough to be confirmed, I will be doing just that.

Senator MCCONNELL. Thank you. I suppose you are going to want to be very careful on this next question, given who is sitting behind you, but the United States Attorney's Office where you have spent your legal career actually gives you more relevant experience than almost anything else you could do. In fact, it is a unique advantage, as Senator Sessions and others have pointed out, in preparing to be a Federal District Court judge.

Do you know how your experience compares with others who have been appointed to the Federal Court in Kentucky at the time of their appointment?

Mr. BUNNING. Senator McConnell, I have spoken with several of the judges, some behind me, some who were not able to be here. I believe it compares favorably. I would not be—I am incredibly humble to state that I believe my experience makes me qualified for this job that I have been nominated for. They are—their level of experience and breadth and depth of their experience when they came to the bench with varied backgrounds.

I am fortunate enough that my time at the U.S. Attorney's Office has given me a great reverence for the practices and the procedures in the Eastern District of Kentucky. We have been blessed with very fine judges, some of which came from the U.S. Attorney's Office for the Eastern District of Kentucky, and I think you might better ask them than myself that question.

Senator McCONNELL. I will.

Finally, the issue of complex cases. The Chairman mentioned antitrust and voting rights cases, but I would surmise there are probably a whole lot of lawyers who have been appointed to the Federal Courts in America who have never handled antitrust cases. It is kind of a narrow specialty.

But there was one case you were involved in in which you were dealing with a treaty, is that right, to—

Mr. BUNNING. The Mutual Legal Assistance Treaty?

Senator McCONNELL. Yes. Would you describe the complexity of that and what that was about?

Mr. BUNNING. We had—I believe it was the *Galloway* case you are referring to—we were trying to get—the Customs Office and myself were researching the law in that area and needed to obtain records from the Netherlands. There were certain practices and procedures that we had to follow. Certain countries have treaties with the United States for sharing of information. The Mutual Legal Assistance Treaty is one of those items.

We had to complete an affidavit, a very lengthy affidavit, saying why we needed it. It took approximately six months to get the records, but finally were able to obtain the records and use them as part of our case in chief during the *Galloway* trial. It was something I had not done before. However, there was a statute which we needed to follow. We followed it to the tee and we were able to obtain the records that we needed, which assisted in obtaining the conviction in that particular case.

Senator McCONNELL. You also handled the first Internet harassment case in the Eastern District, is that right?

Mr. BUNNING. I believe that is correct, Senator McConnell. That was a—the case that was mentioned earlier where the defendant had sent, salacious is probably an understatement, e-mails to a particular victim, to her family, or not to her family, but to her Sunday School, to her principal, and it really was an ugly case.

We reviewed the statutes to try to find something where we could help because it involved Canada, it involved Western Kentucky, it involved getting records from an Internet service provider, which there is a particular statute on that, as well, and we were finally able to find what we needed and we used Title 47, United States Code Section 223, and we were fortunate enough that the grand jury indicted, that we did the investigation, and ultimately,

the defendant was sentenced to 24 months, which is the statutory maximum.

Later, that case evolved into something much greater when the victim, the primary victims in my case were threatened, as were others and myself, as well. So that has given me a lot of perspective on victims' issues.

Senator MCCONNELL. Thank you, Mr. Chairman.

Chairman LEAHY. In fact, the threat against you was considered serious enough you were put under protection because of that threat, were you not?

Mr. BUNNING. Yes, that is correct, Mr. Chairman. My wife and my two children at the time had to leave very quickly, and that is just part of the job.

Chairman LEAHY. I understand.

Senator KYL?

Senator KYL. Thank you, Mr. Chairman, and thank you for holding this hearing.

I have been an advocate for victims' rights, and one of the things that struck me about your record, Mr. Bunning, is the recognition that you received, I believe as a result of that particular case, the Department of Justice's Annual Victim's Rights Recognition Award, and I compliment you for that.

Mr. BUNNING. Thank you.

Senator KYL. Mr. Chairman, I have a couple of biases here. I have known Mr. Bunning now since 1987 and I know something of his character and his temperament because I am so well acquainted with his parents. Therefore, I confess some bias in this matter.

But I also think I have another bias, and it is the same bias that I think the ABA has, and I do not mean this in a critical way at all. It is a natural aspect, I think, of the growth. I recognize the ABA leadership would probably deny this, but I think there is some feeling that those of us who were law review and were civil practitioners in large law firms think that that is what the practice of law is all about, the complex civil litigation and the like, and a large component of the ABA is made up, or the leadership of the ABA is made up of attorneys that have had that background. That is my background and I think that is really the big important stuff in the law.

But, of course, after having practiced for 20 years and then having spent 15 or 16 years in the Congress, I have got a little different perspective, especially since I have had the good fortune of being able to select nominees for appointment to the bench. I have had to think a lot more about what it takes to be a good Federal District judge, and I have concluded that somebody with the experience that Mr. Bunning has probably enters that office with a better chance of being a good judge than someone with the kind of experience that I had myself, and it is for the reasons that have been pointed out by so many people here.

The things that a Federal District judge in the Eastern District of Kentucky is going to deal with are exactly the kind of things that Mr. Bunning has dealt with. So I may come in with a lot of experience from the big law firm and complex civil litigation, but I am going to have to learn all of those rules and the other proce-

dures that attend to the criminal cases because that is the bulk of the work.

In this age of specialization, I think we need to be careful about nominating or confirming judges who may be real hot-shots in one specific area of the law and they do not have the breadth of practice that David Bunning does.

I would note, Mr. Chairman, that I helped to select three nominees for the District Court in Arizona, all of whom were confirmed. One of them had almost identical experience. In fact, she is the first Arizona Hispanic Federal District judge and had a background very much like David Bunning's background.

Her counterpart was a civil judge, somebody that practiced a lot of the civil litigation, and I have talked to both of them since and they are learning a lot from each other. But clearly, the one with the experience as an Assistant U.S. Attorney hit the deck running.

That is really what I want to ask you about, David. Everybody brings unique attributes to the team. You are going to join an erudite bench. What you bring to that bench is youth, I think the ability to work hard, the ability to hit the deck running, and also an ability to relate to the people that the judge has to relate to in the courtroom, the families, the victims, and the defendants, and let us face it, most of the defendants are young men who have gotten it wrong with the law and they need some guidance. They need somebody who can be tough but who, when they are done, they and their families say, "I was treated fairly and now I have a better understanding of why I have got to get straight with the law."

My question to you, you have, according to the record, a very good record of working hard, coming in early and working late and so on. Your court needs somebody who can handle a large caseload. My question is, are you going to work every bit as hard as you have as an Assistant U.S. Attorney when you are elevated to the bench, question number one, and are you willing to take on an even larger caseload than some of the judges who have been there for a long time as soon as you are able to handle that?

And finally, how do you think you can relate to the families, to the victims, to the young defendants who will appear before you that you will have to sentence and so on, to bring something special to the court, something that perhaps some of the older judges do not necessarily bring to that court? How would you relate your experience and the special qualities you have to the administration of justice, the rule of law, and helping the public gain confidence in our Federal judiciary?

Mr. BUNNING. I am going to answer the last question first, as I remember them. The public gaining confidence in the judiciary, I believe that starts with respect of the system, respect to the witness, the victim, all litigants, the lawyers, and the accused. I have spent—I have tirelessly spent the last ten years of my life making sure that justice is served in all cases. If that means we do not proceed on an indictment, presenting an indictment, if that means I do not believe there is probable cause to get a search warrant, I have been very candid with agents about it.

With respect to the first question about working hard to make sure that—working just as hard as a District judge, I want to assure every member of this Committee and every member of the

Senate, I have always been very privileged to put every ounce of my energy into my job. I am a tireless worker. I have always been—put a lot of attention to detail, which I believe will be important if I am fortunate enough to be confirmed by the Senate.

The other question, I believe, was about relating to young defendants. I have sat across tables from many a cooperating co-defendant, in criminal cases. I have talked to victims. I have been a victim myself in a criminal case. That was an eye-opener. You never think that you are going to be the one, but it just was a result of tireless effort, tightening the noose, if you will. Obviously, I will not be—that may not be a good analogy to use, but working tirelessly to achieve the result that I needed in that particular case.

I do have the perspective of being relatively young. I believe I probably have a little bit more gray hair today than I have a year ago. I like to think that is because of my children.

[Laughter.]

Mr. BUNNING. But ultimately, I think that the breadth and the depth of what I have been doing and the tireless way I have approached my job, in a very blue-collar way in a white-collar suit, will serve me well if I am confirmed.

Senator KYL. Thanks, Mr. Chairman.

Chairman LEAHY. Thank you. Do not worry about the gray hair. Some of us would take it any color at all that might come in.

[Laughter.]

Chairman LEAHY. In listening to Senator Kyl's question, I am sure that neither Senator Kyl, he did not mean to suggest, nor did you by your answer, that automatically, those young men who are before the court are all guilty. I mean, that is something that has to be determined.

Mr. BUNNING. Absolutely.

Chairman LEAHY. And I understand what you mean on being a victim. During my years as a prosecutor, I was shot at, I was threatened with murder, and a number of other things. I came here for the relative safety—

[Laughter.]

Chairman LEAHY. —and anonymity of the United States Senate, and that is because I guess they did not know about anthrax back in the days when I was a prosecutor. Now, they send something through that is supposed to take out me and a few hundred thousand other people.

But we do our work, and unfortunately in this case, the letters are something that threaten not only Senator Daschle and myself, but all 100 Senators and a whole lot of staff and, unfortunately, on the way here, murdered several innocent people and have injured several others.

You described the Fleschig case, Lisa Fleschig, and I may be mispronouncing it. I understand in this case, the inmate who was incarcerated, she was being transported by a male corrections officer transporting. He was alone with her and was charged that he had sexually assaulted her. The courts, following a motion that you had made on behalf of another U.S. Attorney, eventually said that the correctional staff was not negligent in permitting the inmate to be escorted alone. The officer was acting outside of the scope of his

employment. Judge Forester, who is here, granted that motion. The Sixth Circuit affirmed.

I am just curious. Was there ever a remedial action taken against this officer? I am not suggesting there was anything wrong with the decisions and, obviously, the Circuit upheld it, but was any redress provided to the victim, any action taken against the corrections officer?

Mr. BUNNING. Mr. Chairman, I believe there was. That was a tragic set of facts. The Federal Tort Claims Act, we had a defense. We raised it. It was granted. It was affirmed.

As I recall, the officer, his name was Bruce Trent, and at that time, we could not prosecute him criminally because the rape did not occur within the special maritime jurisdiction of the United States because it was at her apartment, and he indicated that if she said anything, he would say that she was trying to escape.

As I recall, he was dismissed. I cannot verify that. I could follow up, if you would like. I could try to obtain that information from the Bureau of Prisons, but—

Chairman LEAHY. I was just curious what finally happened there. You described it very accurately in your questionnaire, but I was just curious what finally happened.

Mr. Bunning, we will keep the record open so others can submit questions. I have a couple that are fairly technical in nature. I did not think it would be fair to simply spring them on you. We are going to submit them to you. If you have questions about the nature of the questions, feel free to call back to the staff.

Others will be able to do that, as we will hold this open. It will also give you a chance, when there will be other testimony here today, if you want to respond to anything raised in that, you will have the opportunity.

I appreciate the comments of the senior Senator from Kentucky on the question of fairness. I assure you, this will be a fair hearing. I thank you for being here. Your wife has been very patient. I suspect she is supportive of you in this matter.

Mr. BUNNING. I hope so.

[Laughter.]

Mr. BUNNING. I believe so.

Chairman LEAHY. You cannot see here, sitting where you are, but the look of pride and love that you received throughout this, I think answers that question.

We will stand in recess for a few minutes.

Mr. BUNNING. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

[Recess.]

Chairman LEAHY. I am very pleased that Mr. Trimmier and Mr. Weiner and Mr. Best were able to join us. I understand that Mr. Trimmier is the Chair of the American Bar Association's Standing Committee on the Federal Judiciary and Mr. Weiner will be testifying and that Mr. Best will be available for questions. I apologize for the spring allergies I seem to pick up. My voice is going. But I know you have been sitting here a long time. I thank you for being here and yield to you, Mr. Trimmier.



**STATEMENT OF ROSCOE TRIMMIER, JR., CHAIR, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON FEDERAL JUDICIARY, WASHINGTON, D.C.; AND DAVID C. WEINER, SIXTH CIRCUIT REPRESENTATIVE, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON FEDERAL JUDICIARY, WASHINGTON, D.C.; ACCOMPANIED BY JUDAH BEST, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON FEDERAL JUDICIARY, WASHINGTON, D.C.**

Mr. TRIMMIER. Thank you, Senator Leahy. Mr. Chairman, members of the Committee, my name is Roscoe Trimmier and I am a practicing lawyer in Boston, and I am, as Senator Leahy indicated, the Chair of the American Bar Association Standing Committee on Federal Judiciary.

With me today is David C. Weiner, the Committee's Sixth Circuit Representative and the principal investigator for this investigation. To my far left is Mr. Judah Best, a former Committee member and a former Chair of this Committee who acted as the second investigator in this case. We appear here to present the views of the Association on the nomination of David L. Bunning to be a United States District Court Judge for the Eastern District of Kentucky.

After careful investigation and consideration, including an evaluation of his written submissions, a majority of our Committee is of the opinion that Mr. Bunning is "not qualified" for appointment. A minority found him to be "qualified."

Before the specifics of this case, I would like to review briefly the Committee's procedures so that you will have a clear understanding of the process the Committee followed in this investigation. A more detailed description of the Committee's procedures is contained in an ABA booklet entitled, "Standing Committee on Federal Judiciary: What It Is and How It Works," which was last published in July of 1999.

The ABA Committee investigates and considers only the professional competence, integrity, and judicial temperament of the nominee. Ideological or political considerations are not taken into account. Our processes and procedures are carefully structured to produce a fair, thorough, and objective evaluation of each nominee. A number of factors are investigated, including intellectual capacity, judgment, writing and analytical ability, industry, knowledge of the law, professional experience, character, integrity, and general reputation in the legal community.

The investigation is ordinarily undertaken by the member of the Committee residing in the judicial circuit in which the vacancy exists, although in some cases it may be conducted by another member of the Committee or a former member of the Committee.

The starting point for an investigation is the receipt of the candidate's responses to the public portion of the Senate Judiciary Committee questionnaire. These responses provide the opportunity for the nominee to set forth his or her qualifications, professional experience, significant cases handled, major writings, and the like.

The principal investigator personally conducts extensive confidential interviews with a broad spectrum of individuals who are in a position to evaluate the nominee's professional qualifications, and he also examines the legal writings of the candidate. The principal investigator interviews the candidate and discusses his or her

qualifications for a judgeship, as well as the substance of adverse information raised during the investigation. The candidate is given a full opportunity to respond and to provide any additional information he or she may choose.

Sometimes, a clear pattern emerges in the interviews and the investigation can be briskly concluded. In other cases, conflicting evaluations as to professional competence may be received or questions might arise as to integrity or temperament. The principal investigator usually submits an informal report on the progress of the investigation to the Chair, providing a preliminary assessment of the nominee's qualifications. In those cases where it appears that the preliminary assessment may be "not qualified," as a matter of fairness, another investigator may be asked to come into the investigation and conduct the supplemental inquiries he or she feels appropriate and to make a recommendation.

At the conclusion of all inquiries, a formal investigative report, containing a description of the candidate's background, summaries of all interviews conducted, including the interview with the prospective nominee, or in this case nominee, an evaluation of the candidate's qualifications and a recommended rating, all of that is circulated to the entire 15-member Committee, together with complete Senate Judiciary Committee questionnaire responses and copies of other relevant materials. Any supplemental report is also provided to each Committee member.

After studying these materials, each Committee member telephones a vote to the Chair rating the nominee "well qualified," "qualified," or "not qualified." The votes are later confirmed in writing.

An important concern of the Committee in carrying out its function is confidentiality. The Committee seeks information on a confidential basis and assures its sources that their identities and the information they provide will not be revealed outside the Committee unless they consent to disclosure. It is the Committee's experience that only by assuring and maintaining such confidentiality can sources be persuaded to provide full and candid information.

However, we are also alert to the potential for abuse of confidentiality. The substance of adverse information is shared with the nominee, who is given full opportunity to explain the matter and to provide any additional information bearing on it. If that cannot be done, the information may not be relied upon by the Committee in reaching its evaluation.

As to the specific investigation before us, Mr. Bunning was nominated on August 2, 2001. Mr. Weiner began his investigation shortly after receiving Mr. Bunning's August 10, 2001, responses to the public portion of the Senate Judiciary Committee questionnaire.

On September 12, Mr. Weiner prepared and submitted to me as Chair of the Committee an informal report that thoroughly presented the results of his investigation, summaries of all his confidential interviews, a summary of his interview with Mr. Bunning, and a recommendation. Because that recommendation was proposed to be that Mr. Bunning be found "not qualified," consistent with Committee procedures, I appointed a second investigator, a

former member and Chair of our Committee, Mr. Judah Best, to conduct a supplemental investigation.

Mr. Best conducted confidential interviews with 17 persons, some of whom Mr. Weiner had previously interviewed, and he, too, interviewed Mr. Bunning in his office on September 26, 2001. Mr. Best recommended that the Committee rate Mr. Bunning "qualified."

On October 1, 2001, both Mr. Weiner's formal report and Mr. Best's supplemental report were transmitted to all members of the Committee. I encouraged Committee members who had questions for either investigator to contact them directly. After all the Committee members had had an opportunity to study both reports and all attachments, they reported to me their votes on the qualifications of Mr. Bunning. A majority of the Committee voted to find Mr. Bunning "not qualified," and a minority voted to find him "qualified." That vote was reported to this Committee on October 11, 2001.

I will now ask Mr. Weiner to describe the conduct of his investigation and the basis of his recommendation, which the Committee adopted by majority vote. Mr. Best is also here to respond to such questions you may have regarding his supplemental investigation and his recommendations.

Chairman LEAHY. Thank you, Mr. Trimmier.

Mr. Weiner?

Mr. WEINER. Thank you, Mr. Chairman, fellow members of the Committee. My name is David Weiner. I am a trial lawyer from the State of Ohio. I have been practicing for 32 years. I am the Chairman of the Board of the seventh largest firm in Cleveland and a past Chair of the Litigation Section of the American Bar Association. I earned my law degree here in D.C. at the Georgetown University Law Center and began my legal career down the street as a clerk to Senior Circuit Judge E. Barrett Prettyman of the United States Court of Appeals for the District of Columbia Circuit.

As the Sixth Circuit member of the ABA Standing Committee on the Federal Judiciary, I conducted the initial investigation of the qualifications of David L. Bunning. I have been a member of the Standing Committee since 1997. I have participated in numerous investigations of potential and actual nominees to the United States Court of Appeals and the United States District Court. I have done so both as the Committee person responsible for the investigation and as a reviewer of investigations conducted by fellow Committee members. My investigation of the nominee was conducted in the same manner all investigations by the Standing Committee are conducted, as Roscoe Trimmier just explained to you.

My investigation was conducted during August and September of this year. It included over 50 confidential interviews with trial and appellate Federal judges in the Sixth Circuit and Kentucky lawyers who know and have worked with the candidate, who have direct knowledge of his professional qualifications, including those Mr. Bunning listed as references in his questionnaire. I included among my interviews prominent members of the Kentucky Trial Bar. During each conversation, I inquired how the person knew, if at all, the nominee and what the person knew about the nominee's judicial temperament, integrity, and professional competence relevant to his being qualified to serve on the United States District Court.

I also inquired if they knew any reason why the nominee should not be qualified to so serve.

In addition to those nominees, I reviewed other pertinent materials, including writing samples Mr. Bunning selected for me, such as legal briefs he had written. I also met privately with Mr. Bunning in his office in Covington, Kentucky, for nearly three hours. During the course of our meeting, concerns that had been identified during my investigation were discussed and the candidate was given an opportunity to provide additional information and to respond.

Before reaching my recommendation, I reflected at some length upon our guidelines, which appear in the publication Mr. Trimmier described and is referred to commonly as the "Backgrounder." In particular, I deliberated on the various duties and roles United States District judges must perform on a regular basis and the importance of that lifelong position. My recommendation was that the nominee be rated "not qualified." I will shortly set out the reasons for this recommendation, but stress, and I stress this importantly, that I did not reach this conclusion lightly.

Indeed, because my preliminary investigation resulted in a "not qualified" recommendation, our Committee Chair called for a second investigation, which was conducted by a very distinguished member of the D.C. Bar, Judah Best. I have known Mr. Best for decades and I have the highest regard for him. I carefully reviewed Mr. Best's supplemental report and Mr. Best and I discussed our respective views of the qualification of the nominee at length. We could not, however, reconcile our different views.

After careful consideration of both reports, along with the nominee's questionnaire and the written materials he had furnished, the majority of our Standing Committee was of the view that Mr. Bunning is "not qualified" for the position. A minority of the Committee found him to be "qualified."

I emphasize that our Committee takes most seriously its responsibility to conduct independent examination of the professional qualifications of judicial nominees. There is no bright line litmus test as to whether the nominee is not qualified or whether he is qualified. Our recommendation is not the result of tallying the comments, both pro and con, about a particular nominee. Rather, in making our evaluation, we draw upon our previous experience, the information and knowledge we gain about the nominee during the course of our investigation, and our own independent judgment.

I must stress that we apply the same standards and criteria impartially to all nominees. As you know, President Bush has submitted to the Senate the names of 64 nominees for judicial appointment, and our Committee has found only one candidate to be "not qualified."

At the outset, let me state that as to two of our three criteria, there was little brought out during the course of our investigation to question the nominee's integrity, and his judicial temperament was found likely to be satisfactory. There was no question that the nominee is a good person with strong family and religious ties. He is a diligent worker. He told me that he regularly works from eight a.m. to five or six p.m. daily. And, he is generally well liked. I

should also say that he has been cordial and respectful towards me throughout this process.

Rather, our conclusion that the nominee should be rated “not qualified” is based on several serious concerns relating to his competence. Our “Backgrounder” states that, and I quote here, “professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, knowledge of the law, and breadth of professional experience.” There should be, we believe, strong evidence that the nominee is professionally competent to manage and resolve the hundreds of diverse matters that a Federal judge is likely to face. Some of those matters call upon a Federal judge to resolve very complicated and challenging factual legal issues which may have far-reaching and lasting effects on numerous people. A judge regularly must make on-the-spot decisions in the courtroom that require a solid grounding in procedural and substantive law across a broad spectrum. Using that as a guide, we looked at the total experience of the nominee.

Evidence of competency is the strongest and easiest measure when the lawyer has practiced law for a number of years. Based on the Committee’s longstanding experience with investigating nominees, 12 years is what we think to be an appropriate minimum, absent extraordinary circumstances. A lawyer with this amount of experience is found more likely to have been exposed to a broader spectrum of legal issues and acquired more sophisticated responsibilities and perspectives than one lacking such experience. We believe that the judicial system, the public, the trial bar, and the nominees are not well served by placing on the bench one with less than minimum experience.

The 12-year experience guideline is not a hard and fast rule and it is not an automatic disqualifier. The Committee’s criteria provide that limited experience may be offset by the extraordinary breadth and depth of a nominee’s experience over the course of his or her career. Nominees with less than 12 years at the bar have been found qualified by our Committee, albeit rarely.

Mr. Bunning’s civil case experience, however, is very limited and shallow. It includes no exposure to, let alone experience in, complex civil matters that regularly find their way to Federal District Courts. In response to the Senate’s questionnaire about the ten most significant litigated matters personally handled by the nominee, Mr. Bunning listed only three civil cases.

One was a case dismissed on a motion written by the nominee while he was still a law clerk in the U.S. Attorney’s Office. The other two cases included a civil trial against a pro se prisoner and the trial defense of a so-called *Bivens* claim. I learned that approximately one-third of all the nominee’s civil cases were *Bivens* cases, which typically call upon a defending AUSA like Mr. Bunning to routinely litigate similar defenses in each case. Additionally, I was told that many of the other civil cases involved federally detained mental patients who had guardians ad litem appointed when the patients refused prescribed drug treatments. These cases, while certainly significant to the litigants involved, do not represent the type of cases which readily prepare one for a Federal docket.

While his criminal experience takes him to court regularly and he has concluded 18 trials to verdict, the cases were not of the type

that called for particularly challenging lawyering. During the course of the investigation, it was pointed out by several interviewees that the Covington office of the United States Attorney's Office is a satellite office and, therefore, does not get the more significant criminal cases.

Further, there is no evidence that Mr. Bunning received direct supervision or constructive criticism of his work sufficient to contribute to his professional development as a lawyer. During my investigation, I determined the nominee has learned and gained experience on his own. The nominee told me that, "he is pretty much on his own," and he told me his boss believes in a hands-on approach to supervision.

A review of the—

Chairman LEAHY. Hands on or hands off?

Mr. WEINER. Did I say hands on? I apologize, Mr. Chairman. Thank you for listening.

Chairman LEAHY. I had read your testimony earlier. That is why I was—

Mr. WEINER. Thank you for listening so carefully. I appreciate it. A hands-off approach to supervision.

A review of the legal writings he submitted found them to be sufficient from a legal standpoint. Yet, the issues addressed were routine and not complex and the writing style was plain. They revealed little advocacy or elegance, and to me, they read much like the work of a young associate in our firm.

The nominee's lack of academic achievement was another limiting factor. The nominee attended the University of Kentucky for both his undergraduate and law school degrees. Although the university is a fine institution, its law school is not highly ranked. Thus, the nominee's middle-of-the-class law school record does not speak well for him. It is also not a plus that the nominee did not engage in any professionally oriented extracurricular law school activities, such as moot court or law review.

The nominee's age is a concern only so far as it reflects the quality and scope of his professional experience. One might fairly ask whether a 35-year-old could be qualified to sit as a Federal judge. I am not alone on the Committee in my belief that there are 35-year-olds with ten years of experience who have the professional competence to so serve. Our Committee's belief, however, is that Mr. Bunning is not one of them. Yet, and I emphasize this, neither his age nor his lack of 12 years' experience are the determining factors. Rather, it is a combination of average academics, limited civil experience, repetitious and routine criminal matters, writings which, in my words, "just do the job," serious doubts by respected members of the bench and bar, and no intellectual spark or legal enthusiasm that carry the day for our Committee.

For our Committee to rate a nominee as "qualified" for a lifelong appointment to the bench, a majority of us must find the nominee meets, and these are our standards, very high standards with respect to integrity, professional competence, and judicial temperament, and we must find that the nominee, "will be able to perform satisfactorily all the responsibilities required by the high office of a Federal judge." With respect to this nominee, we respectfully sub-

mit that we did not find that to be the case. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Mr. TRIMMIE, do you disagree at all with what Mr. Weiner has said?

Mr. TRIMMIE. What Mr. Weiner has said expresses the view of the majority vote of the Standing Committee. Mr. Best, of course, is here and is in a position to respond to questions concerning his supplemental report.

Chairman LEAHY. And that is the normal procedure, is it not, if there is a majority vote "not qualified," to then seek a second person with experience in this type of investigation to do it?

Mr. TRIMMIE. Yes, that is correct, Senator Leahy. I am not aware of any exception, that is, where the Standing Committee has ultimately concluded with a rating of "not qualified" where there has not been a supplemental investigation.

Chairman LEAHY. And when that happens, I assume there are some cases where they come back with exactly the same results. Other times, as with this with Mr. Best, a different result, am I correct in that?

Mr. TRIMMIE. That is also correct, Senator.

Chairman LEAHY. Now, Mr. Weiner, I would ask you, during the course of your investigation, you mentioned you spoke to a very large number of people. Did that also include the people who are going to appear in the next panel?

Mr. WEINER. Yes, it did, Mr. Chairman. I think I spoke to each one of the three judges and the former—the current U.S. Attorney and former boss of Mr. Bunning.

Chairman LEAHY. And they take a differing view than the majority view from the ABA Standing Committee, is that correct?

Mr. WEINER. I do not think I asked each one of them whether they felt he was qualified or not, but I got their views on the three areas that we look at.

Chairman LEAHY. I do not want you to have to repeat exactly what they say or put words in their mouth, because they are going to testify, but like your testimony, I read it and I think it is safe to characterize it as saying they feel Mr. Bunning is qualified.

Mr. WEINER. I think that is a fair assumption.

Chairman LEAHY. Mr. Best, let me ask you again, and you referred to it in testimony, just so I understand, what percentage of the time do you come back with a "not qualified"? I am thinking back for years, of course, the White House would ask you your opinion, your, the ABA's opinion, prior to making the name public, prior to sending a name up here. Obviously, now the name is sent up then the ABA report is done. It is easy for us on the Committee to know what percentages come out "qualified" or "not qualified." In the past, how often is it that a nominee being looked at by the ABA prior to their name coming up here, what percentage would you give a non-qualified?

Mr. TRIMMIE. Mr. Chairman, I do not have a memory that goes back much beyond the Clinton administration because I became a member of the Committee in 1996. I do have some information on that. My understanding is that the ABA Standing Committee found four potential nominees "not qualified" during the Clinton adminis-

tration, one of whom withdrew. The other three were presented to this Committee with the ABA recommendation and they were confirmed.

Chairman LEAHY. Thank you. And Mr. Best, that was basically my recollection, too, and I just wanted to make sure I was right on this. It is relatively rare, though, I think you all three would agree, when you have a "not qualified" finding, is that correct?

Mr. TRIMMIE. That is correct.

Chairman LEAHY. In all your experience?

Mr. WEINER. Yes.

Mr. BEST. Yes.

Chairman LEAHY. Mr. Best, do you consider it a significant thing when the ABA comes up with such a rating? I mean, you have been at this for a long time.

Mr. BEST. It is unusual. I am not sure it is significant, but it certainly is unusual.

Chairman LEAHY. Well, you have reviewed these findings. We have also heard testimony that when this subsequent review, and I think this is a very good practice on the part of the ABA, if they come up with a finding of "not qualified" to have a subsequent review done, and the testimony is that the subsequent, separate review often finds the same result.

In this case, you found a different result. You found Mr. Bunning was "qualified" to receive a lifetime appointment as a Federal judge. What was it that you saw differently than what the other Committee did?

Mr. BEST. Let me correct a misapprehension.

Chairman LEAHY. Certainly.

Mr. BEST. I have done three supplemental investigations in the last 12 years. In each of those cases, my result was different from the report, the initial report of the investigator, and in two of those three instances, the Committee voted consistent with my report and recommendation.

Chairman LEAHY. So the fact that you were doing a subsequent one, of course, would indicate that they had first found a majority "not qualified." You came back and found "qualified."

Mr. BEST. An initial investigative report was made recommending that the individual be found "not qualified." In the days when the Department of Justice considered them and before the Committee did, they were afforded the opportunity for a second report. They always requested the second report, and—

Chairman LEAHY. Then to return to my basic question, though, what is it you find different?

Mr. BEST. About this candidate?

Chairman LEAHY. Why do you come out with a conclusion different than the ABA Standing Committee did?

Mr. BEST. Let me start, then, with what I did, and if I may, I have a page-and-a-half brief prefatory statement which would form the content of what I am going to say. With your permission, let me read that.

Chairman LEAHY. I do not think anybody would object. You go ahead.

Mr. BEST. Thank you very much, Mr. Chairman, and I want to thank you for the opportunity of providing these brief remarks.



I have practiced trial law in the District of Columbia for over 40 years. I am a Fellow of the American College of Trial Lawyers, and early in my career, I, too, was an Assistant United States Attorney and I, too, worked until three o'clock in the morning and then went to trial the next day.

Chairman LEAHY. I might say that most of the staff here, Republican and Democratic, especially in the last few months, have been doing exactly the same thing. Go ahead.

Mr. BEST. Then there is no difference amongst us. We are all brothers in the labors.

My resume has been submitted to the Committee as part of my written remarks.

I have been a member of the American Bar Association for over 25 years and have served as the Chairman of the Standing Committee on the Federal Judiciary in the 1996–1997 term. I was also a member of the Committee before that, from 1989 to 1992.

In the course of my service, I have conducted numerous investigations of candidates for Federal judicial office. On several occasions, I have conducted what is known as a supplemental investigation after an initial investigative report has preliminarily found a candidate to be “not qualified.”

In September of this year, I was contacted by the present Chair of the Committee, Roscoe Trimmier, Jr., and asked to undertake a supplemental investigation of David L. Bunning. I agreed to do so. I read the initial report prepared by David C. Weiner and the questionnaire completed by Mr. Bunning. I read the legal writings submitted by Mr. Bunning and then contacted Mr. Bunning, identified myself, and had him provide me with the names of additional witnesses.

I conducted interviews of approximately 20 witnesses and personally interviewed Mr. Bunning in Northern Kentucky. I also consulted with several colleagues for their inputs, and I will get into that.

After the consideration of all of the information, I recommended to the Standing Committee that Mr. Bunning, who stands nominated for the United States District Court for the Eastern District of Kentucky, be rated “qualified.” In my view, he had demonstrated the requisite integrity, temperament, and professional competence for the high office for which he had been nominated, and now let me answer the questions with regard to my determination that Mr. Bunning is “qualified.”

When I read the report of Mr. Weiner and read the personnel, the completed personnel report that Mr. Bunning had prepared, there were several questions that I had that I had to deal with. One, it seemed to me that many of the witnesses who were asked about Mr. Bunning were not aware of his civil trial experience and there was no witness that stood with regard to that information. So I received from Mr. Bunning information of several witnesses who could give me information on that basis.

There was also another problem, it seemed to me, and that is there was what I would call background chatter in the investigation. There were several distracting issues that were raised, one of which was annoyance that a United States Senator would assist in the nomination of his son for an office, a judicial office. Two, a real

sense that there was a better candidate for the vacancy, the ideal 53-year-old State court judge who deliberated like Solomon who we all want to have on the Federal bench. And the third thing was the notion, why does a 35-year-old have any place on the Federal bench?

It seemed to me that those were distractions because it distracted you from the main issue, which was whether this candidate was "qualified," or in the terms of this Committee, whether he had the professional competence, the judicial temperament, and the integrity to deal with that.

Chairman LEAHY. But, if I might, the 35-year-old is not a restriction in the U.S. Senate. We have a constitutional age of 30. But there has been this usual rule of thumb in the ABA of 12 years.

Mr. BEST. There is—

Chairman LEAHY. Now here you have ten years, so there must have been something in his record that would have you overturn, in your own mind, that usual rule of thumb. What was it that stood out? I understand what you are saying about the perfect candidate, whoever that might be.

Mr. BEST. Yes.

Chairman LEAHY. But this is, after all, still the prerogative of the President, whomever he appoints. It is our duty to advise and consent, but what was it that stood out that took him out of that 12-year presumption?

Mr. BEST. I will answer that, Mr. Chairman. I spoke with many people who had information with regard to his experience in civil trial, and I spoke to others that had experience in criminal trial. Everyone that I spoke to, with one exception, believed that he had the professional competence to perform as a Federal judge.

He had, as an Assistant United States Attorney, spent an enormous amount of time and detail in learning his craft. He had worked—he regards himself as a workaholic. Those around him regard him with considerable respect. He stands above the crowd. That is the message that comes through from all of the interviews that I undertook.

And then when I spoke with him, and before I spoke with him, I had to deal in my own mind with the notion, can someone who has only been in the United States Attorney's Office and has not served in a civil practice or a private practice in the United States, can he perform the function of a Federal judge?

Fortunately, I did an investigation of someone similarly situated, and I called a sitting Federal judge who had been an Assistant United States Attorney for a number of years and I asked him. I told him my circumstances. I did not identify the candidate. And I asked him, can he function as a Federal judge, and the answer was a resounding yes. There is no problem about it. The judge told me that he had immediately moved onto the bench easily. He knew the nuts and bolts of the system. And he said, "Judd, the thing that you have to look at is not whether or not he can deal on a day-to-day basis, but what is his maturity, because you have to look at the person rather than use such statements as 12 years or 35 years of age—"

Chairman LEAHY. But Mr. Best, the maturity could be set, of course, on anybody, but you are still talking about a very complex

area if you are going to be a Federal judge. For example, you are talking about a Federal judge for the Eastern District of Kentucky. Suppose we were talking about a Federal judge for the Southern District of New York, Central District of California, very, very complex districts, certainly far more than, for example, we would see in my own State of Vermont. Would you feel the same way? Would you still say "qualified"?

Mr. BEST. I am not sure that I would. I am not sure that I would. I focused in terms of whether he would be qualified for the Eastern District of Kentucky, and in my judgment, he would be qualified. I think, given the character of the cases that are presented in that court, and given his experience in dealing with it and his reputation—his reputation is a very important thing, reputation among the lawyers in the community—it seemed to me that he satisfied the requirements.

Chairman LEAHY. Mr. Best, you are an extraordinarily well-qualified lawyer. You have been involved in everything from defending Spiro Agnew to defending people in the Watergate era to currently probably one of the best known names in lawyers here in Washington, D.C., so I ask you this question. In your opinion, should this Committee consider judicial nominees of varying qualities depending upon where they are going? It is not a trick question by any means. I am just curious. I have asked the same question of a number of lawyers in the past, at least privately. Does this Committee, when looking at District judges, have a different standard depending upon what district they are going to serve in, and should we?

Mr. BEST. My view of it is that you look at the candidate and determine whether he can do a job as a judge in the district to which he has been nominated. Lawyers and judges do not like hypotheticals. What would he do in New York? I really did not consider what he would do in New York. I dealt with what he would do in the Eastern District of Kentucky.

One of the important considerations is the position of the U.S. Attorney during the eight or nine years of Mr. Bunning's tenure, ten-year tenure in that office. I feel at ease in relating his view, because he has said these things publicly and he will testify here today. He says he is abundantly qualified and that his capabilities are perhaps five or six times the experience of a civil practitioner, a private practitioner in that area.

And so I believe, given all that we know about this candidate and the fact that he has demonstrated the maturity of a much older person—he is 35 going on 50—it seems to me that he will be a very valuable addition to the bench in this jurisdiction, and those are the reasons that I concluded that he was qualified.

Chairman LEAHY. Mr. Weiner, you have heard Mr. Best, and I am sure you have had a chance to read his report. You have also heard Mr. Bunning here today. Have you heard anything that changes your opinion?

Mr. WEINER. No, Mr. Chairman. I very seriously considered Mr. Best's report before finalizing my report because I do have a lot of respect for Judd. He has been doing this for the Committee a long time, a little longer than I have. I think this is an issue that two reasonable people could disagree on, but I looked very carefully at

all the evidence that I found in this investigation, carefully reviewed the writings, carefully reviewed my interviews with the lawyers and the judges I talked to, my interview with Mr. Bunning, and I like the man.

I wish, in many respects, I wish that my decision had been different and our Committee's decision was different, but on the facts and on the merits, you have to sort of call them as you see them and I called this one "not qualified."

Chairman LEAHY. Mr. Trimmier?

Mr. TRIMMIER. Yes, Mr. Chairman. I, with some trepidation, would like just to state a point of disagreement with Mr. Best, I suppose at my peril.

Chairman LEAHY. Do not feel bad. Disagreements go back and forth on this panel all the time and we still serve together.

[Laughter.]

Mr. TRIMMIER. The reason I say that is, of course, Mr. Best was Chair of this Committee when I first became a member in 1996 and essentially taught me what I purport to know today about its procedures. But the "Backgrounder" and the standards that this Committee uses do not make allowances for any differences among the various circuits or the judicial districts in which a nominee has been nominated.

The Committee is asked to review qualifications of nominees and only recommend those who meet the very high standards of the Committee to a "well qualified" or "qualified" rating and it is not with regard to the district to which they are to be appointed.

Chairman LEAHY. Thank you.

Mr. BEST. May I add a comment?

Chairman LEAHY. Mr. Best?

Mr. BEST. I think it is an unfair formulation because each candidate is born of the experience that he has acquired during his tenure either in the U.S. Attorney's Office or in private practice. The notion of taking a "well qualified"—I am not using it as a term of art, Dave—"well qualified" Assistant United States Attorney in the Eastern District of Kentucky and saying, well, would he be qualified in the Southern District of New York, is a totally, it seems to me, unfair one.

I understand why you have raised it, Mr. Chairman, but I think that insofar as I am concerned, he is qualified for the position that he has been nominated to. Anything more than that is really a matter of speculation.

Chairman LEAHY. Thank you.

Senator McConnell?

Senator McCONNELL. Thank you, Mr. Chairman.

I spent the weekend going over the memoranda and testimony and thought I would spend a lot of time with you, Mr. Best, but I think you have pretty well covered the subject in extraordinary detail, so let me turn to Mr. Weiner.

First, Mr. Weiner, I would not hold my breath on being invited to address the UK Law School Alumni Association.

[Laughter.]

Chairman LEAHY. This from the "well qualified" Senator from Kentucky.

[Laughter.]

Senator MCCONNELL. Let me just touch on one area. It seemed to have been important to you, this whole business of supervision which you emphasized in your report. I mean, I realize it is the ABA's policy not to divulge the comments of any person it interviews. I have concerns about that policy, but I will not ask you to violate it.

In order for our Committee to give the ABA's opinion any sort of weight, however, I need to know whether you interviewed Mr. Bunning's supervisor for the last six years, Mr. E.G. Walburn, not what you talked about, but did you interview him?

Mr. WEINER. If I could have a minute, I may be able to answer that.

Senator MCCONNELL. While you are looking, let me just say it is my understanding that you did not, but obviously you can speak for yourself.

Mr. WEINER. Well, I respect if you have talked to Mr. Walburn and he said I had not, or Ms. Walburn, I am sure I did not, then.

Senator MCCONNELL. I do not want to belabor the point, but to the extent that the supervision issue was significant, it just seemed to me that speaking with Mr. Bunning's supervisor might have been appropriate.

Mr. WEINER. I think if he had been identified to me as Mr. Bunning's supervisor, I would have, in normal course, have tried to reach the person. I usually do. I did talk to his top supervisor.

I think on that issue, Senator, any one of these factors that I talk about, and I guess you cannot help but describe them as negatives, although that was not the intention, I was looking in doing this investigation to find things of an extraordinary nature which would put a person who has been only out ten years of law school, not up to our 12-year normal standard, up to that level. I was looking for some pluses.

The fact that you do not get—and the candidate told me himself that he was pretty much on his own, and if you do not get supervision, you do not get people who are editing your work and testing your thinking process and all the stuff that goes with maturity in that way. I mean, that may not be the only way you could do it. Obviously, by doing things yourself, you do learn a lot, and sometimes you learn from mistakes and sometimes you replicate the mistakes. I am not voicing a view on that either way. But lack of supervision is not a plus in my mind and the Committee's mind.

Senator MCCONNELL. My only thought about that is to the extent that supervision was an issue, it seems to me talking to the supervisor for six years might have been appropriate in resolving that issue, but—

Mr. WEINER. I agree with you, but as I say, the candidate made it real clear to me how that came out, but I appreciate the point.

Senator MCCONNELL. I think the opinion of the ABA is interesting and I particularly like having it in public open session, but we have heard from an awful lot of other people. Let me just read some excerpts.

The current Attorney General of Kentucky, A.B. Chandler, III, a Democrat, said "David is an exceptionally knowledgeable, skilled, and hard-working lawyer. David is of the highest professional and personal character. He has an excellent reputation among his peers

and in his community. David's intelligence, education, courtroom experience, and exemplary dedication to our Federal justice system have prepared him well to serve in the Federal judiciary."

Furthermore, the National Association of Assistant United States Attorneys conducted an investigation into the qualifications of Mr. Bunning for this position. The investigation included interviewing former U.S. Attorneys under whom Mr. Bunning served, Federal judges before whom Mr. Bunning has practiced, extensively, supervisors, colleagues, and members of the law enforcement community. Mr. Bunning has been actively engaged in litigation of civil and criminal cases and amassed a vast amount of practical Federal litigation experience which is unparalleled in the private sector. Finally, our investigation revealed that Mr. Bunning is uniformly viewed as an ethical, even-tempered, and objective attorney and professional and skillful advocate.

Further, the past President of the Kentucky Bar Association, William Robinson, after noting that he is a lifelong registered Democrat, said, "David Bunning has demonstrated that he has the character, integrity, and intellect to meet and exceed the rigorous demands of a Federal judge. His work in the Federal Courts is widely respected. His record of success as a litigator speaks for itself."

Let me just sum up by saying this. We appreciate the views of the ABA, although they are divided. One investigator reached one conclusion, another investigator reached a different conclusion. And we have in juxtaposition to that, we are going to hear from shortly three Federal judges, a former U.S. Attorney for whom Mr. Bunning directly worked, and a ream of evidence from those who have had direct experience with him. And so we appreciate your effort, but it seems to me, gentlemen, that there is substantial evidence of David Bunning's qualification to be a Federal District judge.

I thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Gentlemen, I thank all of you. I do appreciate the role the ABA plays. I have been on this Committee for a quarter of a century now. I have probably read more ABA reports than any of you, or any of you would ever want to. I find it helpful. I also know the enormous amount of time you all give to this process.

I am not sure what determined the decision at the White House to break the tradition going back to President Eisenhower of using the ABA prior to names coming up here. Of course, the President has an absolute right not to, but it is a fact, no matter which party was in control of the Senate, that we would still ask the ABA to do this background. It is helpful.

I appreciate your time. I appreciate all of you coming here. Mr. Best had the shortest trip uptown, but I know that travel is not the easiest these days, for any of us, I might add, so thank you very much for being here.

Mr. TRIMMIE. Mr. Chairman, could I just ask for your indulgence for a few minutes—

Chairman LEAHY. Of course.

Mr. TRIMMIE. —because there are a couple of points I think I need to make in clarification.

Chairman LEAHY. Of course. And also, I should note, the record will stay open to add to it, but please, go ahead, sir.

Mr. TRIMMIE. In connection with this investigation, first of all, I want to make it clear that the Committee members did not receive anything until both the formal report and the supplemental report were completed. I was the only one, other than my distinguished colleagues to the left, who had any knowledge about the investigation until both reports were completed and simultaneously sent to the Committee.

Chairman LEAHY. I see.

Mr. TRIMMIE. There was no preliminary vote. The only vote was the vote that was taken subsequent to the Committee's receipt of both reports.

Chairman LEAHY. That is a good point.

Mr. TRIMMIE. I will also acknowledge to Senator McConnell that this is a matter about which reasonable people might differ, and in many respects it is a judgment issue. We have two distinguished practitioners here who reached different conclusions. The Committee vote was close.

We have provided this service for 50 years as merely another point, a data point, if you will, an input to this Committee. This Committee and its Senate colleagues have the constitutional duty to weigh all of these considerations, including our input along with everything else, in making a decision as to whether or not to confirm a nominee.

Let me also apologize and defend my good colleague, Dave Weiner, because of, in fairness, what might have been misconstrued as a statement about the University of Kentucky Law School. I read his comment not as a disparagement of that law school or its many distinguished graduates.

The rule that we use, the so-called 12-year rule, is one that, for us, raises the level of scrutiny to a higher level so that we look for extraordinary circumstances and distinguished professional accomplishment in a nominee in order to offset what may be fewer years of experience than the ABA would ordinarily like to see.

I think what Mr. Weiner was saying was that there were none of those compensating factors, such as a distinguished academic record, participation on law review, and other extra-curricular activities at the University of Kentucky that would have swayed him or persuaded him to vote another way. It was not, I do not think, intended as any personal disparagement or any disparagement of—

Senator McCONNELL. He is pulling you out of the hot water here, Mr. Weiner.

[Laughter.]

Mr. WEINER. I do not think I have a chance of being asked—

Chairman LEAHY. I was going to say, this Georgetown Law School graduate is not going to get involved in this one one way or the other, but then I am not up for a judgeship, so—

[Laughter.]

Mr. TRIMMIE. One final point, and I am sorry that Senator Kyl is not here. He correctly predicted that someone would seek to defend the ABA against a claim of bias or elitism, I think it was. I am not, and I do not consider myself to be a leader of the ABA. I am a Chair of this Committee and I spend a good bit of my time

insulating this Committee and its work from the leadership of the ABA, but I would like to say this.

The members of this Committee are diverse. Their backgrounds are diverse. The nature of their practices are diverse, some from large firms, some from medium-size firms, some from small firms. We have members who graduated from State law schools. We have those who graduated from Ivy League law schools.

My job as a part of the process of this Committee is to try to ensure that no bias of any source in any direction interferes with the objective determination of professional competence, judicial temperament, or integrity. I just do not think it exists within this Committee. The Committee members are rotated. Approximately one-third of the Committee is replaced each year by each incoming President so as to provide that kind of turnover. I am careful to scrutinize preliminary reports to see if there is any indication of bias or elitism at all.

My own background is one of modest means. I grew up in Charlotte, North Carolina, and I came through a segregated school system and I was fortunate enough to go to Harvard College and Harvard Law School. I think I can recognize elitism when I see it. I reject it, and I do not see it and I did not see it in the conduct of this investigation.

Chairman LEAHY. Thank you.

Senator MCCONNELL. Mr. Chairman, at the risk of wearing out my welcome with you, just let me say, I appreciate your observations and your concession that the business of rating people is, in fact, an imprecise—I mean, it is very hard to do that with precision. As has been previously pointed out, three judges during the Clinton years who were rated unqualified by the ABA were subsequently confirmed, and according to a 1997 National Law Journal article, “ABA’s ‘unqualified’ Judges Doing Well.” They are apparently doing just fine.

During the Reagan years, the ABA gave partial—partial—“not qualified” ratings to several nominees, which certainly proved the point that it is an imprecise activity. Richard Posner, the former Chief Justice of the Seventh Circuit Court of Appeals and the one person whom the Reno Justice Department chose to mediate the Microsoft case because of his nearly unparalleled expertise in antitrust law, Justice Brennan described Judge Posner as “one of the two true geniuses” he had met, and the American Lawyer said, “could be the most influential legal scholar and the most brilliant judge in the country.” Members of your Committee, however, did not think so. He received at least a partial “not qualified” rating.

Judge Posner’s colleague on the Seventh Circuit, Judge Frank Easterbrook, was described in an article in the National Law Journal as having, “an absolute iron grip on case law, on statutes, on everything. He knows the law in a way I do not think any other man in this country can.” The ABA, however, gave him a partial “not qualified” rating.

And the American Lawyer said of Judge Michael Luttig of the Fourth Circuit Court of Appeals that he is a nationally recognized jurist. The ABA recognition of him, however, consisted of a partial “not qualified” rating.



I say all of this not to attack you guys, but just to make the point that it is a tough thing, this business of rating potential jurists, and sometimes you do not get it exactly right. What we are hoping to demonstrate here today is in the case of David Bunning, the second evaluation was a good deal more accurate than the first. I thank you very much.

Chairman LEAHY. I would note that the Chairman does not consider these opinions either to be biased or elitist. I am most appreciative of the ABA in doing this. In my 25 years on this Committee, I have often agreed, sometimes disagreed with the ABA. I have always found it to be helpful, even in those cases where I have disagreed.

Gentlemen, you have done a good service to the bar, all three of you, and to this Committee, and I do appreciate you being here. Thank you.

Mr. TRIMMIE. Thank you very much, Mr. Chairman.

Mr. WEINER. Thank you.

Mr. BEST. Thank you.

[The prepared statement of Mr. Trimmier and Mr. Weiner follows.]

STATEMENT OF ROSCOE TRIMMIE, JR., DAVID C. WEINER, COMMITTEE ON FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION, ON THE NOMINATION OF DAVID L. BUNNING TO BE JUDGE OF THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

Mr. Chairman and Members of the Committee:

My name is Roscoe Trimmie. I am a practicing Lawyer in Boston, and I am the Chair of the American Bar Association's Standing Committee on Federal Judiciary. With me today is David C. Weiner, the Committee's Sixth Circuit representative and principal investigator for the investigation, and Judah Best, a former Committee member and Chair of the Committee who acted as the second investigator in this case. We appear here to present the view of the Association on the nomination of David L. Bunning to be a U.S. District Court judge for the Eastern District of Kentucky. After careful investigation and consideration, including an evaluation of his written submissions, a majority of our Committee is of the opinion that Mr. Bunning is "Not Qualified" for the appointment. A minority found him to be "Qualified."

I. PROCEDURES FOLLOWED BY THE STANDING COMMITTEE

Before the specifics of this case, I would like to review briefly the Committee's procedures so that you will have a clear understanding of the process the Committee's followed in this investigation. A more detailed description of the Committee's procedures is contained in an ABA booklet entitled "Standing Committee on Federal Judiciary: What It Is and How It Works" (July 1999).

The ABA Committee investigates and considers only the professional competence, integrity and judicial temperament of the nominee. Ideological or political considerations are not taken into account. Our processes and procedures are carefully structured to produce a fair, thorough and objective evaluation of each nominee. A number of factors are investigated, including intellectual capacity, judgment, writing and analytical ability, industry, knowledge of the law, professional experience, character, integrity and general reputation in the legal community.

The investigation is ordinarily assigned to the member of the Committee residing in the judicial circuit in which the vacancy exists, although it may be conducted by another member or former member. The starting point of an investigation is the receipt of the candidate's responses to the public portion of the Senate Judiciary Committee Questionnaire. These responses provide the opportunity for the nominee to set forth his or her qualifications—professional experience, significant cases handled, major writings, and the like. The principal investigator personally conducts extensive confidential interviews with a broad spectrum of individuals who are in a position to evaluate the nominee's professional qualifications and also examines the legal writings of the candidate. The principal investigator interviews the candidate

and discusses his or her qualifications for a judgeship, as well as the substance of adverse information raised during the investigation. The candidate is given a full opportunity to respond and to provide any additional information he or she may choose.

Sometimes a clear pattern emerges in the interviews, and the investigation can be briskly concluded. In other cases, conflicting evaluations as to professional competence may be received, or questions may arise as to integrity or temperament. The principal investigator usually submits an informal report on the progress of the investigation to the Chair, providing a preliminary assessment of the nominee's qualifications. In those cases where it appears that the preliminary assessment may be asked to come into the investigation and conduct the supplemental inquiries he or she feels appropriate and to make a recommendation.

At the conclusion of all inquiries, a formal investigative report, containing a description of the candidate's background, summaries of all interviews conducted (including the interview with the prospective nominee), an evaluation of the candidate's qualifications and a recommended rating, is circulated to the entire 15-member Committee together with the complete Senate Judiciary Committee questionnaire and copies of any other relevant materials. Any supplemental report is also provided to each Committee member. After Studying these materials, each member telephones a vote to the Chair, rating the nominee "Well Qualified," "Qualified," or "Not Qualified." The votes are later confirmed in writing.

An important concern of the Committee in Carrying out its function is confidentiality. The Committee seeks information on a confidential basis and assures its sources that their identities and the information they provide will not be revealed outside of the Committee, unless they consent to disclosure. It is the Committee's experience that only by assuring and maintaining such confidentiality can sources be persuaded to provide full and candid information. However, we are also alert to the potential for abuse of confidentiality. The substance of adverse information is shared with the candidate, who is given full opportunity to explain the matter and to provide any additional information bearing on it. If that cannot be done, the information may not be relied upon by the Committee in reaching its evaluation.

## II. THE INVESTIGATION OF MR. BUNNING

Mr. Bunning was nominated on August 2, 2001. Mr. Weiner began his investigation shortly after receiving Mr. Bunning's August 10, 2001 responses to the public portion of the Senate Judiciary Committee questionnaire.

On September 12, 2001, Mr. Weiner prepared and submitted to me, as Chair of the Committee, an informal report that thoroughly presented the results of his investigation, summaries of all of his confidential interviews, a summary of his interview with Mr. Bunning, and a recommendation. Because the recommendation proposed was that Mr. Bunning be found "Not Qualified," consistent with the Committee's procedures, I appointed a second investigator, Mr. Judah Best, a former member and Chair of our Committee, Mr. Judah Best, to conduct a supplemental investigation. Mr. Best conducted confidential interviews with seventeen persons, some of whom Mr. Weiner had previously interviewed, and he, too, interviewed Mr. Bunning in his office on September 26, 2001. Mr. Best recommended that the Committee rate Mr. Bunning "Qualified."

On October 1, 2001, both Mr. Weiner's formal report and Mr. Best's supplemental report were transmitted to all of the members of the Committee. I encouraged Committee members who had questions for either investigator to contact them directly. After all of the Committee members had an opportunity to study both reports, and all the attachments, they reported to me their votes on the qualifications of Mr. Bunning. A majority of the Committee vote to find Mr. Bunning "Not Qualified" and a minority voted to find him "Qualified." The vote was reported to you on October 11, 2001.

I will not ask Mr. Weiner to describe the conduct of his investigation and the basis of his recommendation, which the Committee adopted by majority vote.

Mr. Best is also here to respond to any questions you may have regarding his supplemental investigation and his recommendation.

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STATEMENT OF DAVID C. WEINER, COMMITTEE ON FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION, ON THE NOMINATION OF DAVID L. BUNNING TO BE JUDGE OF THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

Mr. Chairman and Members of the Committee:

My name is David C. Weiner. I am a trial lawyer from the State of Ohio, and have been practicing for 32 years. I am the Chairman of the Board of the 7<sup>th</sup> largest firm in Cleveland and a past Chair of the Litigation Section of the ABA. I earned my legal career down the street as a clerk for Senior Circuit Judge E. Barrett Prettyman of the U.S. Court of Appeals for the District of Columbia Circuit.

As the Sixth Circuit member of the ABA Standing Committee on the Federal Judiciary, I conducted the initial investigation of the qualifications of Mr. David L. Bunning. I have been a member of the Standing Committee since 1997. I have participated in numerous investigations of potential and actual nominees to the U.S. Court of Appeals and the U.S. District Courts. I have done so both as the Committee person responsible for the investigation, and as a reviewer of investigations conducted by fellow Committee members. My investigation of the nominee was conducted in the same manner all investigations by the Standing Committee are conducted, as Roscoe Trimmier just explained to you.

My investigation was conducted during August and September of this year. It included over fifty confidential interviews with trial and appellate federal judges in the Sixth Circuit and Kentucky lawyers who know and have worked with the candidate, and who have direct knowledge of this professional qualifications, including those Mr. Bunning listed as references. I included among my interviews prominent members of the Kentucky trial bar. During each conversation I inquired how the person knew, if at all the nominee and what the person knew about the nominee's judicial temperament, integrity and professional competence relevant to his being qualified to serve as a United States District Judge. I also inquired if they knew any reason why the nominee should not be qualified to so serve.

In addition to these interviews, I reviewed other pertinent materials, including writing samples Mr. Bunning selected for me, such as legal briefs he had written. I also met privately with Mr. Bunning in his office in Covington, Kentucky, for nearly three hours. During the course of our meeting, concerns that had been identified during my investigation were discussed and the candidate was given an opportunity to provide additional information and to respond.

Before reaching my recommendation, I reflected at some length upon our guidelines, which appear in a publication we refer to as the *Backgrounder*. In particular, I deliberated on the various duties and roles United States District Judges must perform on a regular basis, and the importance of that lifelong position. My recommendation was that the nominee be rated "Not Qualified." I will shortly set out the reasons for this recommendation, but stress that I did not reach this conclusion lightly.

Indeed, because my preliminary investigation resulted in a "Not Qualified" recommendation, our Committee Chair called for a second investigation, which was conducted by a very distinguished member of the D.C. bar, Judah Best. I have known Mr. Best for decades and I have the highest regard for him. I carefully reviewed Mr. Best's Supplemental Report, and Mr. Best and I discussed our respective views of the qualification of the nominee at length. We could not, however, reconcile our different views.

After careful consideration of both our reports, along with the nominee's Questionnaire, and the written submissions he had furnished, the majority of our Standing Committee was of the view that Mr. Bunning is "Not Qualified" for the position. A minority of the Committee found him to be "Qualified."

Our Committee takes most seriously its responsibility to conduct an independent examination of the professional qualifications of judicial nominees. There is no bright line litmus test as to whether a nominee is or is Not Qualified. Our recommendation is not the result of tallying the comments B pro and con B about a particular nominee. Rather, in making our evaluation, we draw upon our previous experience, the information and knowledge we gain about the nominee during the course of our investigation, and our independent judgment. I must stress that we apply the same standards and criteria impartially to all nominees. As you know, President Bush has submitted to the Senate the names of 64 nominees for judicial appointment, and our Committee has found only this one candidate to be "Not Qualified."

At the outset, let me state that as to two of our three criteria, little was brought out during the course of our investigation to question the nominee's integrity, and his judicial temperament was found likely to be satisfactory. There was no question that the nominee is a good person with strong family and religious ties, is a diligent worker (he told me that he regularly works from 8:00 a.m. to 5:00 or 6:00 p.m. daily), and is generally well-liked. I should also say that he has been cordial and respectful toward me throughout this process.

Rather, our conclusion that the nominee should be rated "Not Qualified" is based on several, serious concerns relating to his competence. Our *Backgrounder* states

that professional competence encompasses such qualities as intellectual capacity, judgment, writing and analytical ability, knowledge of the law and breadth of professional experience. There should be, we believe, strong evidence that the nominee is professionally competent to manage and resolve the hundreds of diverse matters a federal judge is likely to face. Some of those matters call upon a federal judge to resolve very complicated and challenging factual and legal issues, which may well have far-reaching and lasting effects on numerous people. A judge regularly must make on-the-spot decisions in the courtroom that require a solid grounding in procedural and substantive law across a broad spectrum. Using that as a guide, we looked at the total experience of the nominee.

Evidence of competence is the strongest and easiest measure when the lawyer has practiced law for a number of years. Bases on the Committee's long-time experience with investigating nominees, twelve years is what we think to be an appropriate *minimum*, absent extraordinary circumstances. A lawyer with this amount of experience is found more likely to have been exposed to a broader spectrum of legal issues and acquired more sophisticated responsibilities and perspectives than one lacking such experience. We believe that the judicial system, the public, the trial bar and the nominees are not well served by placing on the bench one with less than such minimum experience.

The 12-year experience guideline is not a hard-and-fast rule, and is not an automatic disqualifier. The Committee's criteria provide that limited experience may be offset by the extraordinary breadth and depth of a nominee's experience over the course of his or her career. Nominees with less than twelve years at the bar have been found qualified by our Committee, albeit rarely.

Mr. Bunning's civil case experience, however, is very limited and shallow. It includes no exposure to, let alone experience in, complex civil matters that regularly find their way to federal district courts. In response to the senate Questionnaire's inquiry about the ten most significant litigated matters personally handled by the nominee, Mr. Bunning listed only three civil cases. One was a case dismissed on a motion written by the nominee while he was still a law clerk in the U.S. Attorneys Office. The other two civil cases, included a civil cases were *Bivens* cases, which typically call upon a defending AUSA like Mr. Bunning to routinely litigate similar defenses in each case. Additionally, I was told that many of the other civil cases involved federally detained mental patients who had guardians *ad litem* appointed when the patients refused prescribed drug treatments. These cases, while significant to the litigants involved, do not represent the type of cases which readily prepare one for a federal court docket.

While his criminal experience takes him to court regularly and he has concluded eighteen trials to verdict, the cases were not of the type that called for particularly challenging layering. During the course of the investigation, it was pointed out by several interviewees that the Covington office of the United States Attorney's office is a satellite office and therefore, does not get the more significant criminal cases. Further, there is no evidence that Mr. Bunning received direct supervision or constructive criticism on his work sufficient to contribute to his professional development as a lawyer. During my investigation, I determined that the nominee has learned and gained experience on his own. The nominee told me that "he is pretty much on his own," and he told me his boss believes in a hands-off approach to supervision.

A review of the legal writings he submitted found them to be sufficient from a legal standpoint. Yet, the issues addressed were routine and not complex, and the writing style was plain. They revealed little advocacy or elegance, and to me they read very much like the work of a young associate in our firm.

The nominee's lack of academic achievement was another limiting factor. The nominee attended the University of Kentucky for both his undergraduate and law school degrees. Although the University is a fine institution, its law school is not highly ranked. Thus, the nominee's middle-of-the-class law school record does not speak well for him. It is also not a plus that the nominee did not engage in any professionally oriented extra-curricular law school activities, such as Moot Court or Law Review.

The nominee's age is a concern only insofar as it reflects the quality and scope of his professional experience. One might fairly ask whether a 35-year old could be qualified to sit as a federal judge? I am not alone on the Committee in my belief that their are 35-years olds with ten year of experience who have the professional competence to so serve. Our Committee's belief, however, is that Mr. Bunning is not one of them. Yet, neither his age nor his lack of twelve years experience are the deterring factors. Rather, it is a combination B average academics, limited civil experience, repetitious and routine criminal matters, writings which "just do the job,"

serious doubts by respected members of the Bench and Bar, and no intellectual spark or legal enthusiasm that carry the day for our Committee.

Four our Committee to rate a nominee as "Qualified" for a lifetime appointment to the bench, a majority of us must find that the nominee meets "very high standards with respect to integrity, professional competence and judicial temperament," and we must find that the nominee "will be able to perform satisfactorily all of the responsibilities required by the high office of a federal judge." With respect to this nominee, we do not find that to be the case.

Chairman LEAHY. I would note that we would normally have started our hearing by going to Federal judges and former U.S. Attorneys first. This is not quite in the nature of our normal hearings and I appreciate all of you for bearing with us. I know from Senator McConnell and Senator Bunning that you were willing to come up here. What I have tried to do, as I said in the beginning of this hearing, in fact, arrange to be here rather than in Vermont today so I could do this.

Without sounding parochial, as much as I love the City of Washington, and it is a beautiful city and it is something everybody should visit and it is a city of which we can be proud that this is our nation's capital, my native State of Vermont appeals to me even more. So I appreciate you coming up here from the Commonwealth.

Judge Wilhoit, Judge Forester, Judge Hood, and Mr. Famularo, I appreciate all of you being here. We have your written statements. Feel free to say whatever you wish and then we might go into some questions.

Judge you took senior status at the end of last year, am I correct on that?

Judge WILHOIT. That is right, January 1.

Chairman LEAHY. The same Judge Bertelsman in February of this year.

Judge WILHOIT. Yes, sir.

Chairman LEAHY. I have to tell you, I do not know what we would do without all the senior judges who have filled in, I think in the Southern District of California and a lot of other parts of this country where we have been trying to fill vacancies for the last several years. If it had not been for senior judges, the court system would come grinding to a halt. But I also appreciate you taking the time to be here, so Judge, why do you not begin.

**STATEMENT OF HON. HENRY R. WILHOIT, JR., SENIOR DISTRICT JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY, ASHLAND, KENTUCKY**

Judge WILHOIT. Mr. Chairman and Senator McConnell, if it would please the Committee, I would like to simply file my statement with the Committee and let it be made a part of the record and then just take two or three minutes to discuss what I really believe to be the highlights of this hearing, if that would be agreeable with the chair.

Chairman LEAHY. Certainly.

Judge WILHOIT. Senator, I cannot tell you what a pleasure it is to be invited back up here after all of these years. The last time I was here, Senator Leahy, you were over here in the cheap seats. [Laughter.]

Chairman LEAHY. Yes, right. I would point out two things on that, Judge. When I first came on this Committee, I was sort of the junior Democrat. Alan Simpson—I do not know if you know Senator Simpson—

Judge WILHOIT. Oh, yes.

Chairman LEAHY. —of Wyoming was the sort of junior Republican. Somebody sent a message in to one of the other of us and they said, “How do you recognize him?” “Well, he is the tall bald guy with glasses at the end of the table.” He looks at it and he says, “There are two of them. Which one is which?”

[Laughter.]

Chairman LEAHY. When I first came to the Senate, I was one of those totally opposed to the seniority system. Now that I have studied it for about 26 years—

[Laughter.]

Chairman LEAHY. —and I understand it far, far better than I did then, I realize how mistaken I was, so there is a certain maturity that goes on as you go, but please go ahead, sir.

Judge WILHOIT. The ABA report has cast this nomination into some sort of confusion and I felt compelled to come. I am pleased and honored to be invited to come and try to shed some light that would assist the Committee in making this very important decision.

Mention has been made about the type of cases that Mr. Bunning has handled while serving as an Assistant U.S. Attorney. Now, I have been in a unique position, because since 1991 through 1994, I handled 66 cases involving Mr. Bunning. I think that is more cases than any of the other judges in the Eastern District have handled. Now, of these cases—now, I realize that the ABA representative took a squinted eye view of the *Bivens* type action, Federal Tort Claims, Section 1983, which is probably—can be the most complex type of litigation in the Federal Courts today, habeas cases, FOIA type cases. In the criminal field, I handled 19 cases involving Mr. Bunning. This happened to be indictments and post-conviction type cases and trials.

The ABA says, well, we have objective evidence that he lacks the qualifications because of the type of cases that he has handled. My testimony is subjective, but it can give the Committee objective evidence in evaluating.

I have been hanging around courthouses all my life. I saw my father try a murder case when I was 11 years old. Have you been to Sandy Hook, Senator McConnell? Have you ever been to Sandy Hook?

Senator MCCONNELL. Oh, yes.

Judge WILHOIT. Eleven years old. I have been hanging around courthouses ever since. I have practiced law for 21 years, and I really was a country lawyer, a sole practitioner and practiced for 21 years. That is all I did, practiced trial law. I was a Fellow of the American College of Trial Lawyers before coming to the bench. Now, you do not send them \$25 and a box top and ask for admission to the American College of Trial Lawyers. After I came to the bench, I have had 20 years of experience. I believe, Senator Leahy, that I can recognize a trial lawyer when I see one. I can spot a Dis-

strict judge when I see one. I feel I have—I may be wrong, but I am not in doubt about it.

This idea of the type of cases that he has handled, what is deeper and more important, can the candidate recognize legal issues in a case? How is his analysis of those issues? And I can say to you without hesitation that David Bunning, he has what it takes.

Finally, I am just going to give you one personal experience. Probably four weeks ago, the Supreme Court came down with what is called the *Apprendi* decision that stood the Federal Sentencing Guidelines on its ears. We have had to review countless sentences, and I had David Bunning before me in Covington for two hearings involving an *Apprendi* resentencing, highly complex issues. I had no idea I was going to be here today, and after I heard about 30 minutes of these arguments, and he was up against this hot-shot lawyer from Cincinnati or Covington, he parried every thrust.

It was a highly complex case. He handled it, and I sort of sat back in my chair and I guess I had a little smile on my face. He probably, if he noticed it, wondered why I was smiling. But I really felt like—I was telling myself, this young man is going to do. He is going to be a worthy successor. We are going to be well served. And I think these are the issues.

Finally, I would recommend him to you. I think he will make a great District judge. And if he does not become a great District judge, his mother is going to kill him.

[Laughter.]

Judge WILHOIT. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. We will take Senatorial notice of that without having to have the mother testify.

[Laughter.]

[The prepared statement of Judge Wilhoit follows.]

STATEMENT OF HENRY R. WILHOIT, JR., SENIOR U.S. DISTRICT COURT JUDGE OF THE EASTERN DISTRICT OF KENTUCKY, ON THE NOMINATION OF DAVID L. BUNNING TO BE U.S. DISTRICT COURT JUDGE

Mr. Chairman, Senator Hatch, and distinguished members of the Committee, I want to thank you for this opportunity to appear before you. Today, December 10, 2001, marks the one hundred eighty-fifth anniversary of the date the Judiciary Committee was established as a standing committee of the United States Senate. The second chairman of this committee was Senator John J. Crittenden, a Kentuckian who served as a Senator on no less than six occasions. Among other task, it fell to Senator Crittenden to fill the shoes of another great Kentuckian, Senator Henry Clay, upon the "Great Compromiser's" resignation in 1842. I am also reminded of Senator John Rowan who served as chairman of this committee from 1829 to 1831. Senator Rowan, incidentally, is buried near Bardstown, Kentucky—the site of inspiration for Stephen Foster's "My Old Kentucky Home." Off course the Commonwealth is currently represented on this committee by my friend Senator Mitch McConnell.

From my personal experience, I can say that the nomination and confirmation process is not an easy one. Despite the rigors and challenges of the confirmation process, those who have been through it recognize that it is vital in ensuring that the federal judiciary remains an independent and equal branch of government, as intended by our founding fathers. As you deliberate upon the nomination of David L. Bunning, please consider some personal observations of Mr. Bunning that I have had as I have observed him from the bench.

Let me begin by speaking about the manner in which I believe Mr. Bunning will conduct himself as a federal judge. The Adversarial nature of our judicial process requires that we have men and women sitting in the federal bench who possess certain qualities that are otherwise rare in the legal community. The possessor of the ideal judicial temperament is an individual who thinks strategically, listens patiently and acts not out of passion or prejudice but instead as a result of reasoned

logic. It is a person who can ask insightful questions without allowing himself to be drawn into the conflict. Most importantly, the ideal judge is an individual who respects the law as it is recorded and who's character and honesty are beyond reproach.

These are the characteristics which I have observed in David Bunning throughout his regular appearances before me. There have been many instances when he could have embarrassed an opposing party who's claims were un-meritorious or who's briefs were substandard. While a lesser man may yield to the temptations of victory, he has always respected the dignity of the opposing party and, thereby, the dignity of the Court. Regrettably, it is the practice of some attorneys in the federal bar to misconstrue the holdings of some cases or to fail to mention authority which contradicts their position. In the eighty civil and criminal cases which he has practiced before me, I have always found his oral arguments and briefs to be candid, forthcoming and credible. In short, David Bunning has always shown himself to be an advocate who, while arguing aggressively and persuasively for his client, has never strayed beyond the bounds of ethical practice.

He has also proven to be an effective manager of his time and has been a very able case manager. During his four years in the Civil Division of the U.S. Attorney's Office, Mr. Bunning handled approximately sixty-five cases that came before me. His transfer to the Criminal Division greatly limited the number of his cases which were assigned to me. The criminal cases which he did prosecute before me, however, were each handled in a timely and efficient manner. The case management skills he has learned through his decade of experience in the U.S. Attorney's Office will serve him well as a federal judge.

In preparation for appearing before you today, I wanted to review some of the cases in which he had participated. What struck me most is that his experience as an Assistant United States Attorney has been so broad. As I mentioned earlier, he has worked in both the civil and criminal divisions of the U.S. Attorney's Office. During his tenure in the civil division, he actively defended various officers and agencies of the government in numerous contexts. Since the United States Supreme Court handed down its landmark decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*,<sup>1</sup> that area of law has been continuously evolving. He has successfully defended several *Bivens* actions and has demonstrated a superior understanding of this confusing body of law. His command of this area of law is so significant that the Department of Justice invited him to be a guest lecturer on this topic in 1995. David Bunning has also been called upon to represent the government in several civil rights actions involving the federal government. He played a large role in the government's defense in *Washington v. Reno*.<sup>2</sup> That case involved a claim by federal inmates that the Bureau of Prisons was acting in violation of their civil rights by restricting their access to telephones. Most recently, he has been involved in cases involving the United States Supreme Court's decision in *Apprendi v. New Jersey*.<sup>3</sup> As I'm sure you know, the *Apprendi* decision has required the courts to reopen many, many criminal cases and to re-examine the sentences imposed on thousands of prisoners nationwide. In his briefs and oral arguments recently made before me, David Bunning has demonstrated an exceptional insight and command of the complex issues raised by *Apprendi* and their interaction with the federal sentencing guidelines.

Temperament and experience make good judges. I believe David Bunning to be honorable, patient and a strategic-thinker. He knows and respects the law. He also has the experience necessary to take on this important task. I can say this with great confidence, for I have seen him in the courtroom. I have witnessed his command of the rules of procedure and evidence. I know that he is more than capable of dispensing justice. He comes before you as a servant of the people. He comes before you with a wonderful mother. His father might well pass muster with you, as well. We look forward to having David Bunning as our colleague. Thank you very much for your interest in him.

Chairman LEAHY. Judge Forester, Senator McConnell was good enough to share some of your letters to him with me. I notice you were concerned about prompt action on nominees for the Eastern District of Kentucky. I took that to heart, but apparently we are moving too fast. We moved Judge Karen Caldwell's nomination

<sup>1</sup> 403 U.S. 388 (1971).

<sup>2</sup> Civ. Act. No. 93-CV-217.

<sup>3</sup> 530 U.S. 466 (2000).



through here with such speed that she is going to take up a little while to close up her law practice, but is she now on the bench?

Judge FORESTER. Yes, sir. Her ceremony was Friday a week ago, as I recall. She is on the bench.

Chairman LEAHY. I think we confirmed her on October 23. What about Danny Reeves?

Judge FORESTER. Danny Reeves was confirmed last week and he plans to begin his work around January 1. So he will be ready to go soon.

Chairman LEAHY. Okay. Go ahead.

**STATEMENT OF HON. KARL S. FORESTER, CHIEF JUDGE,  
UNITED STATES DISTRICT COURT FOR THE EASTERN DIS-  
TRICT OF KENTUCKY, LEXINGTON, KENTUCKY**

Judge FORESTER. I wanted to thank the Committee very much for the attention that you have given to our vacancies. It was very much appreciated. We needed help and you gave it to us and we appreciate that.

Chairman LEAHY. Well, Senator McConnell is a valued member of this Committee and he reminds me, not more than a half a dozen times a day, but he reminds me, and if somehow he misses me, Senator Bunning is there and follows up and reminds me. I have learned more about Kentucky since becoming Chairman of this Committee than I thought I ever would.

Judge FORESTER. You have been very responsive, Mr. Chairman. [Laughter.]

Judge FORESTER. We are grateful to you, most grateful, sir.

Chairman LEAHY. Thank you.

Judge FORESTER. Over a period of ten years, I have personally observed David Bunning. He has appeared in my court on many occasions representing the United States in various civil and criminal matters. One criminal case was submitted to a jury, and it is, I think from the unique perspective of a trial judge, that I am able to report to you with regard to Mr. Bunning.

In my 13-and-a-half years, and you were sitting almost in that same spot 13-and-a-half years ago. You were not down on this end, but you were moving in the middle.

Chairman LEAHY. I was moving up. Love that seniority system. [Laughter.]

Judge FORESTER. Senator Biden was sick at the time and you were filling in for him as Chairman.

Chairman LEAHY. That is right. That was during the Reagan years. I think I held more hearings during that time when I was filling in for Senator Biden when President Reagan was here than I think I ever want to hold again. Now, at least I have the ability to pass them on to others, but I think I got the full load that year.

Judge FORESTER. I believe you did. But in my experience as a trial court judge, I have served a number of lawyers, hundreds, maybe thousands, from all across the country. Where I sit in Lexington, I have seen the good, I have seen the mediocre, I have seen the bad.

My personal relationship with David Bunning is extremely limited, but I am familiar with his reputation in the community among those who know him and it is excellent in all respects. His

professional character is beyond reproach. I have observed that he is industrious, diligent, and all around a hard worker. I think he possesses a strong intellectual capacity and very good writing skills. Now, his writing skills to me are more than plain or more than pedestrian. They are excellent for the purpose that they were submitted to me.

He is a strong advocate for the government, but he is fair and he is compassionate. Everything I have considered lead me to believe that he will have an outstanding judicial temperament.

I believe that, from what I have heard, that his experience may be of concern to the Committee, and I would suggest that his experience should be of little concern to the Committee. I do not want to beat a dead horse, but a litigation attorney in the Office of the United States Attorney for the Eastern District of Kentucky has much more courtroom experience than attorneys with many, many more years of practice, and I can speak personally on that.

Prior to my appointment as a Federal judge, I practiced law for 22 years in a small town. A substantial part of my practice did consist of litigation in State and Federal courts. However, a major part of my practice consisted or involved non-litigation matters, appearance before administrative bodies, real estate matters, counseling with corporate clients.

The point I am trying to make here is that Mr. Bunning in his ten years of experience has more courtroom time than I had in 22 years, and I am personally familiar with Federal judges who have had less experience. I am familiar with Federal judges who, when they went on the bench, had no practice experience. All of these judges have done very well and I have no reason to doubt that Mr. Bunning will do well. I think he will be a great asset to our district.

I want to mention to you, finally, that the Eastern District of Kentucky has a great tradition of Federal prosecutors being appointed to the bench early in their careers. I would point out or mention Judge Mac Swinford, who was appointed by President Roosevelt, Judge Bernard Moynahan, who was appointed by President Kennedy, Judge Eugene Silar was appointed by President Ford, and Karen Caldwell, just recently appointed by President Bush. I believe that the experience as Federal prosecutors provided a fertile training ground for the future role as a judge of each of these individuals.

At the risk of wrestling a 30- or 40-foot alligator, I want to clear up something about experience and I want to clear up something about complex cases. There is no one who can be an expert in tax law and an expert in antitrust law and an expert in civil rights law, an expert in criminal law. No one can do all of that. It is impossible.

Back when I was practicing law, when you were practicing law, there was a general sort of practice. You did a little bit of everything. But in this day and time, you cannot do it all. We as judges have to be able to be impartial and sit and hear the arguments and make the right decisions and David Bunning can do that, in my opinion. Thank you, sir.

Chairman LEAHY. Thank you very much, Judge Forester, and it is good to see you again.

Judge FORESTER. Thank you.  
[The prepared statement of Judge Forester follows.]

STATEMENT OF KARL S. FORESTER, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF KENTUCKY, ON THE NOMINATION OF DAVID L. BUNNING TO BE U.S. DISTRICT COURT JUDGE, FOR THE EASTERN DISTRICT OF KENTUCKY

Senator Leahy and the Members of the Committee:

On behalf of the United States District Court for the Eastern District of Kentucky, I wish to thank the Committee for its prompt attention to the three vacancies which existed on our Court. To date one of the vacancies has been filled, one has been favorably reported out of Committee and is awaiting Senate action, and now the Committee is acting on the nomination of David Bunning.

Over a period of ten years I have personally observed David Bunning. He has appeared in my Court as an Assistant United States Attorney representing the United States in numerous civil and criminal matters including one criminal trial which was submitted to a jury. It is from the unique perspective of a trial court judge that I am able to report to the Committee with regard to Mr. Bunning.

In my 13½ years of experience as a trial court judge, I have observed hundreds, if not thousands, of attorneys from across the country—the good, the mediocre, and the bad. My personal relationship with Mr. Bunning is extremely limited. However, I am familiar with his reputation in the community where he lives among those who know him, and it is excellent in all respects. I can personally advise the Committee that his professional character is beyond reproach. Moreover, he is industrious, diligent and an all-around hard worker. He possesses a strong intellectual capacity which I have personally observed. He possesses a strong intellectual capacity which I have personally observed. His analytical and writing ability and knowledge of the law is outstanding. Moreover, while he is a strong advocate for the government, he is fair and compassionate. All the factors I have considered lead me to believe his judicial temperament will also be outstanding.

An issue I believe may be of concern to the Committee is Mr. Bunning's experience. I suggest that this years of experience should be of little concern to the Committee. A litigation attorney in the Office of the United States Attorney for the Eastern District of Kentucky has much more courtroom experience than most attorneys with many more years of practice. Let me speak personally on this. Prior to my appointment as a federal judge, I practiced law for 22 years. A substantial part of my practice consisted of litigation in the state and federal court. However, a major part of my practice involved non-litigation matters such as appearances before administrative agencies, real estate matters and counseling with corporate clients.

The point I am trying to make there is Mr. Bunning has had more courtroom experience in ten years than I had in 22 years of practice. I am personally familiar with several federal judges who were practicing lawyers less than ten years. These judges have been outstanding and two have been elevated from a trial court to an appellate court. Also, I have known several able and competent judges who came to the Court from academia, who had little or no practice experience. It is my opinion that Mr. Bunning has all the attributes necessary to be an outstanding judge on our Court. He is uniquely qualified for the position and will be a great asset. As the members of this Committee are well aware, a federal district court's docket normally consists of a high percentage of matters in which the United States Attorney's Office plays a key role. In fact, in the last year my docket in the Eastern District of Kentucky at Lexington consisted of at least 50% criminal matters. David Bunning has had experience handling all these matters laboring for the United States in the trenches, so to speak, as a federal prosecutor.

Finally, I would mention to you that the Eastern District of Kentucky has a great tradition of federal prosecutors being appointed to the bench early in their careers. Judge Mac Swinford was appointed by President Franklin D. Roosevelt; Judge Bernard T. Moynahan, Jr. was appointed by President John F. Kennedy; Judge Eugene Siler was appointed by President Gerald Ford; and within the last month Judge Karen Caldwell was appointed by President George W. Bush. The experience of all four of these judges as federal prosecutors provided a fertile training ground for their future roles as federal judges. Mr. Bunning's ten years' experience as a prosecutor provide him with actual working knowledge of the procedure rules of the federal courts and the local rules of the Eastern District of Kentucky that would serve him well as a judge.

Mr. Chairman, the fact that three judges are present today underscores our belief that there is a critical need for the position to be filled as soon as possible. We are

mindful that the Constitution gives us no voice whatsoever in the selection of judges; however, we deem it appropriate that we respond to the request of the Committee to appear personally.

Once again, we thank the Committee and its Chairman for the attention given to the needs of the Eastern District of Kentucky.

Chairman LEAHY. Judge Hood?

**STATEMENT OF HON. JOSEPH M. HOOD, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY, LEXINGTON, KENTUCKY**

Judge HOOD. Mr. Chairman, like Judge Wilhoit, I would like to just file my written testimony in the record, if you could—

Chairman LEAHY. Of course.

Judge HOOD. —and proceed to talk about something a little different about David Bunning than about everybody else here has.

I echo what has been said by my colleagues, and I have had him in practice in front of me quite a bit, so I agree with what they say. But what I would like to point out is that David Bunning is a man of substance.

Recently, in the case of the *United States v. Overby*, he promised the defendant in a plea agreement that he would recommend a sentence below the statutory mandatory minimums and at the lower end of our guidelines if she cooperated with the government in the prosecution of several of her co-defendants. Although the defendant's guidelines were actually calculated erroneously earlier by the probation office, that non-binding estimate that David Bunning promised that woman was something that he stood by. He did not have to do it, but he did.

Now, that tells you a lot about how David Bunning will handle people who come before him. He will treat them fairly and with all deference that he is required to give, and he will do that to the best of his abilities. Thank you.

Chairman LEAHY. Judge Hood, and you feel this will be the case whether somebody is plaintiff or defendant, government or defendant, rich, poor, so on?

Judge HOOD. When we have sentencing proceedings, and Mr. Famularo will attest to it, some United States Attorneys not only are not just satisfied with the fact of conviction, they would like to have ears and tail, kind of like matadors do. David recognizes that his role is to present the facts to the court, to make an argument, and then let the judge make his decision and he does that without any indication that he thinks that we should do exactly what he says.

Chairman LEAHY. My question goes to one of the basic rules I have always had in my own mind—every Senator has to make up his or her own mind how they will vote on a confirmation. We do not have a specific guideline. It is sort of left up to each one of us under the Constitution.

What I have always done when I am looking at somebody for a judicial nomination, once I have gone past the questions of competence and background, legal ability, and so on, I ask, if I walked into that courtroom, would I be able to look at that judge and say, it is not going to make any difference what my political background is, what my color is, what my wealth or status in the community is, whether I am plaintiff or defendant in a civil case, whether I

am government or defendant in a criminal case? Can I look at that judge and say, whatever that decision comes down, I know that judge has been fair and has made that decision based on how he or she looks at the law, looks at the facts, and not how he or she references a particular bias against me or the other party?

May I ask you this, Judge. If you were a litigant, would you feel that same way going into a court presided over David Bunning?

Judge HOOD. I often ask a juror, Senator, during voir dire when there is a question raised as to whether that juror could be fair and impartial, I always ask them, put yourself in the shoes of the defendant in this case. Would you want a person like you serving on your jury with that same feeling that you might have?

Well, I am looking forward, if confirmed, to having David Bunning as a colleague, because I know from everything I have seen from him, heard about him, he can do just what you expect him to do, to sit there with blinders, the obvious blind justice, treating everybody fairly, with a level playing field, and no one should feel with any reservation, even though they might have gone to a different law school than the University of Kentucky, as all three of us did.

Chairman LEAHY. Thank you. I am going to leave that one alone. [Laughter.]

[The prepared statement of Judge Hood follows.]

STATEMENT OF JOSEPH M. HOOD, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF KENTUCKY, ON THE NOMINATION OF DAVID L. BUNNING TO BE ASSISTANT U.S. ATTORNEY FOR THE EASTERN DISTRICT OF KENTUCKY

Senator Leahy and the Members of the Committee:

I have known David L. Bunning since his appointment as an Assistant United States Attorney for the Eastern District of Kentucky over a decade ago. I thank you for inviting me to share my thoughts about him with you.

Although my contacts with Mr. Bunning have been essentially professional, I am aware of his reputation for honesty and integrity in the area where he lives and practices. Those who know him, both personally and professionally, consider him to be above reproach as the report submitted by the Federal Bureau of Investigation surely reflects.

In addition to representing the government in numerous pre-trial motions and sentencing proceedings, Mr. Bunning has tried four criminal cases to verdict in front of me. He comes to court knowing the facts and law applicable to his case. His witnesses have been interviewed. He is aware of potential evidentiary objections to their testimony and the rules of evidence which apply to those objections. He makes succinct and cogent arguments. He knows the importance of making a record and does not become noticeably upset when a ruling goes against him. He has looked numerous jurors in the eyes and asked them to return a verdict favoring his client, a request which has always been granted in the cases he has tried before me.

One case which Mr. Bunning prosecuted to verdict is *United States v. Galloway*, which involved a conspiracy to import a large amount of the so-called party drug Ecstasy into this country from Holland. An unusual feature of this case was the requirement imposed by 18 U.S.C. § 3505 concerning the admission of foreign business records. He handled this evidentiary issue, one not frequently seen in the Eastern District of Kentucky, without hesitation.

Mr. Bunning has demonstrated to me that he has a "feel" for the judicial process that is quite unusual for someone of this age and experience. Just like a good card player has a "feel" for when to play his cards, I believe that a good trial lawyer has a "feel" for a trial. It is an innate, unquantifiable trait that very few attorneys possess. In the *Galloway* case, Mr. Bunning displayed this "feel" by electing to save an item of evidence for rebuttal instead of introducing it in his case-in-chief. In so doing, he eviscerated the defendant's theory of the case.

Mr. Bunning is a man of substance. Recently, in *United States v. Overby*, he promised the defendant in a pleas agreement that he would recommend a sentence below the mandatory minimum and at the lower end of her guidelines if she cooper-

ated with the government in the prosecution of her co-defendant. Although the defendant's actual guidelines were higher than the original, Non-binding estimate of the probation officer, Mr. Bunning stood by his promise and recommended that the defendant be sentenced to the originally calculated lower term, something he was not legally obligated to do.

Yes, Mr. Bunning is young, but I personally know others younger and with less professional experience than him who have gone on to be highly-respected federal trial judges. Based on my quarter of a century experience as a federal magistrate and district judge, I believe that Mr. Bunning, if confirmed, will become such a judge in a very brief period of time, one whom I would be proud to have as a colleague.

Chairman LEAHY. Mr. Famularo?

**STATEMENT OF JOSEPH L. FAMULARO, DEPUTY SECRETARY,  
COMMONWEALTH OF KENTUCKY, FRANKFORT, KENTUCKY**

Mr. FAMULARO. Mr. Chairman, Senator McConnell, I do have a written statement prepared today, and if the Chairman please, I would like that that be filed part of my testimony.

Chairman LEAHY. It will.

Mr. FAMULARO. And since I am the last speaker following judges, I have learned a long time ago, when you follow the judges, keep it very brief.

I would like to touch on some points that I think are very applicable to my very strong enthusiasm for David Bunning's nomination to be judge for the United States District Court for the Eastern District of Kentucky.

First of all, I was David's former boss for some eight years. I am a Democrat. President Clinton appointed me to be United States Attorney for the Eastern District in 1993 and I served in that capacity for eight years. I might also note that I am very proud, Mr. Chairman, to have served ten years as a State prosecutor, both as county, Commonwealth, and in the State appellate system as a State Attorney General. It is one of the greatest things that I can say in my career, to have represented the people of the Commonwealth and the United States.

Since I was David's boss for some eight years, I feel that I can provide a very informed and unbiased assessment of his fitness for the office of Federal District judge.

Much has been said about experience. In my considered opinion, most United States Attorneys have, in reality, more legal experience and certainly much more litigation experience than do private practitioners who have been practicing law for an equivalent amount of time. It would be my opinion that David would have at least double the effective experience for a private practitioner, especially in the Federal system. I say double, but one could as easily use a multiplier of three or maybe five.

David has been an Assistant United States Attorney for ten years and he has been in the Criminal Division for the last six. I am personally familiar with what he does, and Senator, he has been in the courtroom almost every single day. He has appeared before all three of these distinguished judges, as well as Judge Bertelsman, Judge Kaufman, and also the United States Magistrate. Just because he is in the Covington office does not mean that he does not include the entire Eastern District.

He carries regularly, when I was a United States Attorney, one of the heaviest caseloads in the office. I personally reviewed the

statistics every single month and David was always in the top three or four of the Assistant United States Attorneys in this category.

David served in the Civil Division much before I got there, but I assure you what I heard and what I observed the short time that he did do civil work that it was excellent. He did try two civil actions to a jury, and again, in my humble opinion, David's civil litigation experience is at least equal to a civil litigation experience of a private practitioner who has been practicing law for two or three times as long as David.

In the Criminal Division, he tried 18 cases to a verdict. The vast majority of these cases were jury trials. They included the criminal matters that we hear in the Eastern District almost every day—narcotics, violent crime, health care fraud, economic fraud, forfeiture prosecution. These make up the bulk of what goes through the Office of United States Attorney in the Eastern District of Kentucky. They have included some more complex matters, such as major drug and white-collar crime. Some have involved numerous defendants, and others have required proving a charge entirely with circumstantial evidence.

David did prosecute one of the first Internet harassment cases in our office. I might add, this is the case that David became a victim, and I must state, in my 30 years as a prosecutor, both State and Federal, I have never been more scared when I found out that one of those men came to the office to target David for a hit. How do I know it was a hit? Because some 15 minutes later, he met with an undercover police officer who, in turn, arrested him. So I must say, David did show courage under fire.

He has extensive appellate experience. I know for a fact that he has written over 50 appellate briefs and he has appeared before the United States Sixth Circuit Court of Appeals at least ten times. This appellate experience also far exceeds the experience of most private practitioners. David does not only know appellate procedure, but he knows how to make the requisite record for appeal, a skill that is a must for trial judges.

His heavy caseload not only shows the depth and breadth of his legal experience, it shows he has a strong work ethic and efficient case management skills. Both skills are important attributes for Federal trial judges who must handle large volumes of cases in a timely manner.

Lastly, Senator, and in my opinion most important, he possesses the attributes which are essential for a good trial judge. He has a great attitude. He is pleasant, upbeat, and enthusiastic. He is easy to deal with and he treats everyone with respect. He is dedicated to the legal profession and he has the fortitude to persevere regardless of whatever difficulties or challenges may face him.

In sum, I have appeared before a lot of judges in my career and I feel that I know the qualities that distinguish a good judge from a bad judge. In fact, my father was a trial judge, as was my brother. I am the only one that has never made it. If I were to appear before a judge, I would want him to possess the skills and attributes that David Bunning has.

Senator I strongly support his nomination and I will be very happy to answer any questions that you may have. Thank you very much.

Chairman LEAHY. Thank you very much.

[The prepared statement of Mr. Famularo follows.]

STATEMENT OF JOSEPH L. FAMULARO, U.S. ATTORNEY, EASTERN DISTRICT OF KENTUCKY ON THE NOMINATION OF DAVID L. BUNNING TO BE JUDGE FOR U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

Mr. Chairman, Senator Hatch and Members of the Committee, I am pleased to appear before the Judiciary Committee today in enthusiastic support of the nomination of David L. Bunning to be a Judge for the U.S. District Court for the Eastern District of Kentucky. I am both David's former boss and a Democrat. President Clinton appointed me to be United States Attorney for the Eastern District of Kentucky in 1993, and I served in that capacity for eight years. I was thus David's boss for eight of his ten years in the U.S. Attorney's Office. I therefore feel that I can provide a very informed and unbiased assessment of his fitness for the office of federal district court judge.

David Bunning has compiled more federal courtroom experience in his career than most people do in a lifetime. I have practiced law for almost thirty-five years, in both the public and private sectors. Based on my extensive experience, it is my considered opinion that most assistant United States Attorneys (AUSAs) have, in reality, more legal experience—and certainly much more litigation experience—and certainly much more litigation experience—than do private practitioners who have been practicing law for an equivalent amount of time. David has at least double the effective experience of a private practitioner, especially in the federal system.

I say at least double because one could easily use a multiplier of three, and maybe as high as five, in considering the effective litigation experience of the career of a typical assistant United States Attorney. And this general rule of thumb applies even more strongly in the case of David Bunning. He has been an assistant United States Attorney for the last ten years, and for the last six years, David has been in court almost every day. He has litigated both civil and criminal matters on behalf of the people of the United States, and he has been successful in over 90% of his cases. As the former United States Attorney in David's office, I can attest that he regularly carried one of the heaviest caseloads in our office, usually placing in the top three or four AUSAs in this category. David has worked long and hard "in the well of the court," and he is thus extremely familiar with the types of cases over which federal judges in Eastern Kentucky preside.

In his four years in the Civil Division, David was responsible for a wide variety of civil litigation matters. For example, he defended the United States in prisoner litigation, Federal Tort Claims Actions, *Bivens* actions, civil rights cases, and employment rights cases. All of these types of matters are a mainstay of the daily business of the civil docket of the eastern district. As a testament to David's litigation skills, he was able to dispose of most of these actions through motion practice. However, he did try two civil actions to a jury. In my considered opinion, David's civil litigation experience alone is at least effectively equal to the civil litigation experience of a private practitioner who has been practicing law for two or three times as long as David.

In David's six years with the Criminal Division, he has tried eighteen cases to verdict. The vast majority of these cases were jury trials. The types of criminal matters David handled—narcotics, violent crime, health care fraud, economic fraud, and forfeiture prosecutions—are cases that make up the bulk of my former office's criminal cases in federal court. David's cases have included some of the more complex matters in the Eastern District such as major drug and white collar criminal cases. For example, they have involved numerous defendants or have required proving a charge entirely with circumstantial evidence. David also prosecuted one of the first Internet harassment cases in our office. David has been almost completely responsible for his cases, from investigation through indictment through discovery to trial to sentencing and through the appellate stage. His trial skills are superb. David is skilled in federal trial procedure and the Federal Rules of Evidence. He is thus well-equipped to preside over all phases of the criminal matters that will come before him.

David also has extensive appellate experience. Because of David's legal skills, including his research and writing skills, he has often personally handled appeals of this decisions, rather than using our appellate counsel. David has written in excess of fifty appellate briefs, and he has argued before the Sixth Circuit Court of Appeals



at least ten times. This appellate experience also far exceeds the experience of most private practitioners. David thus not only knows appellate procedure, but he knows how to make the requisite record for appeal—a skill that is a must for trial judges.

David's heavy caseload not only shows the depth and breadth of his legal experience, it also shows his strong work ethic and efficient case-management skills. Both skills are important attributes for federal trial judges, who must handle large volumes of cases in a timely manner.

Lastly, David Bunning possesses the other attributes which, in my experience, are essential for a good trial judge. He has a great attitude: pleasant, upbeat and enthusiastic. He is easy to deal with, and he has the fortitude to persevere regardless of whatever difficulties or challenges may face him. I sum, I've appeared before a lot of judges in my career, and I feel I know the qualities that distinguish a good judge from a bad judge. If I were to appear before a judge, I would want him to possess the skills and attributes that David Bunning has. I strongly support his nomination, and I will be happy to answer any questions you might have.

Thank you

Chairman LEAHY. Senator McConnell?

Senator MCCONNELL. First, Mr. Chairman, I want to thank you for spending your Monday here rather than in Vermont and personally presiding over a hearing that you could have handed off to a more junior member of the Committee and being here for over three hours.

I also want to thank—I think everybody went to UK, right, everybody? All of us have sort of managed to struggle after having that inadequate beginning to our careers—

[Laughter.]

Senator MCCONNELL. But we have before us four distinguished graduates of the University of Kentucky, of which I am quite proud, particularly my colleague, Joe Famularo. We were in the same class. That was back during the Coolidge years, was it not, Joe?

Mr. FAMULARO. I believe it was.

[Laughter.]

Chairman LEAHY. A good Vermonter, I would hasten to add.

Senator MCCONNELL. I know all of you went to considerable effort to rearrange your schedules in order to be up here today and we are extremely grateful to each of you for doing that. I think the testimony you have offered is the best testimony possible because you know the nominee. You have worked with him. You have had a chance to observe him up close and your views, it seems to me, are enormously significant as we consider this nomination.

So I just wanted to express my deep gratitude to all four of you for your willingness to come up here and testify for this outstanding nominee. Thank you very much.

Chairman LEAHY. Thank you.

If there are no further questions, we will keep the record open the appropriate time for questions and responses. At this time, I will also insert into the record a statement from Senator Strom Thurmond regarding Mr. Bunning's nomination.

[The prepared statement of Senator Thurmond follows.]

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Mr. Chairman:

Thank you for holding this hearing today on the nomination of David L. Bunning to be United States District Court Judge for the Eastern District of Kentucky. I hope that the testimony of Mr. Bunning and the other distinguished panelists, in-

cluding three Federal judges and Mr. Judah Best, will demonstrate to this committee that Mr. Bunning is eminently qualified to be a Federal District Judge.

The Senate has a duty to ensure that a person is qualified for the job to which he is nominated. However, we should also give proper deference to the President's nominations to the Federal Judiciary. By all accounts, Mr. Bunning has been criticized as being too youthful and inexperienced. As someone who has been criticized as being too old for the job, I am particularly sensitive to these types of charges. Mr. Bunning's age should not be a factor.

He has a great deal of experience as an Assistant United States Attorney, and he has demonstrated to most of the witnesses here today that he has an outstanding legal mind. I do not believe that Mr. Bunning's critics have overcome the presumption that the President has nominated a qualified candidate.

Mr. David Weiner, the American Bar Association's Sixth Circuit representative, concluded that Mr. Bunning was "Not Qualified." In Mr. Weiner's statement, he notes that twelve years of experience is a minimum requirement for a Federal judge, absent "extraordinary circumstances." Mr. Weiner's statement asserts, "We believe that the judicial system, the public, the trial bar and the nominees are not well served by placing on the Bench one with less than such minimum experience." This type of analysis sets the bar extremely high for a nominee if he does not meet the twelve-year experience requirement. Mr. Bunning would be required to come forth with "extraordinary circumstances" to prove his fitness. It is just this type of mechanical obedience to an arbitrary number that concerns me.

We should look at Mr. Bunning's experience in light of the work that he has done and in light of the comments of Federal judges and other legal experts. Mr. Bunning has practiced law for ten years, and he has ample experience as an Assistant United States Attorney. He has represented the United States in both civil and criminal matters, and he has impressed the judges who have witnessed his layering abilities.

Judge Karl S. Forester, Chief Judge of the United States District Court for the Eastern District of Kentucky, asserts in his statement that Mr. Bunning has more courtroom experience that he did when appointed to the Federal Bench. Judge Forester practiced law for 22 years, but major portions of this practice included non-litigation matters, such as real estate transactions and counseling corporate clients. Mr. Bunning, however, has constantly appeared in the courtroom as a litigation attorney in the Office of the United States Attorney for the Eastern District of Kentucky. I agree with Judge Forester that we should focus on spent an adequate amount of time as a trial lawyer in Federal courts.

Mr. Weiner's evaluation also concludes that Mr. Bunning has insufficient experience in civil matters, citing his experience in defending against *Bivens* claims as routine. However, Judge Henry R. Wilhoit, Jr., of the Eastern District of Kentucky, concludes that Mr. Bunning's experience as an Assistant U.S. Attorney is broad, and that *Bivens* cases present a "confusing body of law." Judge Wilhoit also notes that the Department of Justice invited Mr. Bunning to be a guest lecturer on this topic in 1995. I think that Mr. Weiner's disregard of *Bivens* cases is misplaced. I doubt that the Department of Justice would invite guest speakers on an area of the law that is as simple as Mr. Weiner asserts.

I would also like to address Mr. Weiner's conclusion that Mr. Bunning does not have the necessary "intellectual spark" to serve as a Federal judge. Again, I think that it is important to look at what Federal judges have said about Mr. Bunning. United States District Judge Joseph Hood states in his testimony that Mr. Bunning comes to court fully prepared, knowing both the facts and the law. Judge Hood also finds his arguments to be "succinct and cogent." In addition, he states that Mr. Bunning "has a 'feel' for the judicial process that is quite unusual for someone of his age and experience." Judge Hood is not alone in his assessment of Mr. Bunning's intellectual abilities. Judge Karl Forester states, "He possesses a strong intellectual capacity which I have personally observed." He goes on to say, "His analytical and writing ability and knowledge of the law is outstanding." I believe that these comments by respected jurists should allay any fears about Mr. Bunning's mental fitness for the job.

Mr. Chairman, thank you for providing this hearing for Mr. Bunning. I believe that he will serve the United States well if appointed to the Federal Bench. Not only does he have adequate experience, but he is an intelligent, hard-working man committed to the rule of law. A similar conclusion was also reached by Mr. Judah Best, a distinguished member of the D.C. Bar, who conducted a second investigation of Mr. Bunning for the ABA. I hope that this hearing will make Mr. Bunning's qualifications apparent and that he may be confirmed in a timely manner.

Chairman LEAHY. We are in recess. Thank you.

[Whereupon, at 1:16 p.m., the Committee was adjourned.]

[Questions and submissions for the record follow. Note: Answers to questions were not available at the time of printing.]

#### QUESTIONS

##### Questions for the American Bar Association submitted by Senator Leahy

QUESTIONS FOR THE ENTIRE ABA PANEL: MR. ROSCOE TRIMMIE, MR. DAVID WEINER, AND MR. JUDAH BEST

*Question 1:* I would like all of you to answer this question. In your experience on the ABA Standing Committee on the Federal Judiciary, is it unusual for the Committee to return a decision of majority "not qualified?" Approximately what percentage of the time does this occur?

*Question 2:* Given the relative rarity of a "not qualified" finding, what significance do you feel it has when the Committee does make such a finding?

##### QUESTIONS FOR MR. JUDAH BEST

*Question 1:* Mr. Best, you have reviewed the findings of the ABA Standing Committee on the Federal Judiciary, a majority of whose members found Mr. Bunning to be "not qualified" to serve as a federal district court judge.

A. In your subsequent investigation of Mr. Bunning's background and experience, what information did you discover that supports your contrary conclusion that Mr. Bunning is, in your opinion, "qualified" to serve a lifetime appointment as a federal judge?

B. As you are aware, one of the standard factors the ABA considers in determining its rating for judicial nominees is the number of years the nominee has been practicing law. The ABA has a strong presumption for recommending nominees with at least 12 years of experience. What specifically, about Mr. Bunning's record impresses you such that this presumption should be overturned in his case?

*Question 2:* In your opinion, why did you rate Mr. Bunning as "qualified" rather than giving him the more laudatory rating of "well-qualified?" In other words, what is it about his background that prevented you from thinking that Mr. Bunning is "well-qualified?"

*Question 3:* As you are aware, Mr. Bunning has been nominated to the U.S. District Court for the Eastern District of Kentucky.

A. If Mr. Bunning had been nominated to one of the busier, more urban districts, such as the Southern District of New York or the Central District of California, would you have arrived at the same conclusion that he is "qualified" for the job? Why or why not?

B. In your opinion, should the quality of, or selection standards for, a judicial nominee vary depending on the district in which he is designated to serve?

*Question 4:* Do you share any of the Concerns about Mr. Bunning's qualifications that have been enumerated by the majority decision of the ABA Standing Committee on the Federal Judiciary? Please explain.

##### QUESTION FOR MR. DAVID WEINER

*Question 1:* Mr. Weiner, having been the testimony of Mr. Best and Mr. Bunning, have you heard anything that could change your evaluation of Mr. Bunning as "not qualified" to serve as a federal judge?

##### Questions for David L. Bunning submitted by Senator Leahy

*Question 1:* As you know, the ABA is going to testify later in this hearing and state its concerns regarding your qualifications for the federal bench based on a lack of sufficient experience. After they have testified, the record will be open for you to respond in any way you wish, but do you wish to give any response not to the testimony you expect the ABA to give?

*Question 2:* One of the factors leading the ABA to give you a "not qualified" rating was your writing experience. Both the initial and follow-up investigators determined that your writing was not impressive, in part because you have not been called upon to address particularly challenging or intellectually rigorous legal and doctrinal matters in your capacity as an Assistant U.S. Attorney. As you know, one of the most important functions of a federal district judge is to write orders and opinions—

and each word in these ruling can matter. Opinions issued by federal judges provide not only direction to the parties before you, but in some instances also leave a lasting imprint on future jurisprudence. Please tell the Committee about your writing skills and how your experience has prepared you to effectively fulfill the legal writing responsibilities of a federal judge, despite a relative lack of complex cases.

*Question 3:* The ABA also expressed concern that you have handled civil matters for only four of your ten years in legal practice. As you know, federal court dockets are overflowing with many complex civil cases, ranging from employment or voting rights discrimination to anti-trust or large-scale class action litigation. Please tell the Committee whether and how your legal experience has prepared you to adjudicate complicated civil cases and manage a busy docket involving such matters.

*Question 4:* As a former prosecutor, I believe that representing “the people” in criminal prosecutions is an important form of public service, and I commend you for your years of service to the people of Kentucky. How will you make the transition from advocate for the government to neutral decision-maker, particularly with regard to adjudicating criminal matters where, as a judge, you would be charged with vigorously safeguarding defendants’ right to a fair trial?

*Question 5:* In the past few years, the Supreme Court has struck down a number of federal statutes, most notably several designed to protect the civil rights and prerogatives of our more vulnerable citizens, as beyond Congress’s power under Section 5 of the Fourteenth Amendment. The Supreme Court has also struck down a statute as being outside the authority granted to Congress by the Commerce Clause. These cases have been described as creating new power for state governments, as federal authority is being diminished. At the same time, the Court has issued several decisions, most notably in the environmental arena, granting states’ significant new authority over the use of land and water, despite long-standing federal regulatory protection of the environment. Taken individually, these cases have raised concerns about the limitations imposed on Congressional authority; taken collectively, they appear to reflect a “new federalism” crafted by the Supreme Court that threatens to alter fundamentally the structure of our government. What is your view of these developments?

*Question 6:* Can Congress ever subject states to private suits for damages for discrimination based on classification to which the Supreme Court does not give heightened or strict scrutiny?

*Question 7:* If Congress provides money to a state on the condition that it use the money in certain ways, can Congress constitutionally require a state that accepts such funding to waive its sovereign immunity to private actions for money damages if the state is misusing such funds?

*Question 8:* Are there any federal statutes or sections thereof concerning which the Supreme Court has not yet ruled that violate the state sovereign immunity doctrine under the U.S. Constitution?

*Question 9:* Are there any federal statutes or sections thereof that go beyond Congress’ enumerated powers under the Constitution?

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**Question for the Judicial Panel: Hon. Henry Wilhoit, Senior District Judge; Hon. Karl Forester, Chief Judge; Hon. Joseph Hood, Judge, U.S. District Court for the Eastern District of Kentucky; Hon. Joseph Famularo, Deputy Secretary, Commonwealth of Kentucky**

*Question 1:* Thank you all for coming today to testify at this hearing on behalf of my colleague, Mr. Bunning. You have all been present for the testimony of Mr. Tremmier and Mr. Weiner of the American Bar Association, who feel that Mr. Bunning does not meet the necessary qualifications to serve as a federal judge.

A. Having seen Mr. Bunning’s work firsthand, could each of you please speak briefly as to your opinion of his qualifications and why he should be confirmed despite an unfavorable ABA rating?

B. In your opinion, is there something about Mr. Bunning’s experience and legal talents that make him a particularly strong choice for the federal bench?

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SUBMISSIONS FOR THE RECORD

COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL  
FRANKFORT, KY 40601-3449  
*August 31, 2001*

The Hon. Alberto Gonzalez  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

**Subject:** Letter in Support of the Nomination of David Bunning As District Court Judge for the Eastern District of Kentucky

Dear Judge Gonzalez:

I am writing in support of the nomination of David Bunning as District Court Judge for the Eastern District of Kentucky. I have known David for fifteen years. David and I first became acquainted when we both worked at the law firm of Brown, Todd and Heyburn in the firm's Lexington, Kentucky office.

David has served honorably as an Assistant United States Attorney for the Eastern District of Kentucky for ten years, and as such, he has acquired ten years of courtroom litigation experience in both civil and criminal cases. He is an exceptionally knowledgeable, skilled and hard working attorney. David is of the highest professional and personal character. He has an excellent reputation among his peers and in his community. David's intelligence, education, courtroom experience and exemplary dedication to our federal justice system have prepared him well to serve in the federal judiciary.

I respectfully support the nomination of David Bunning as District Court Judge for the Eastern District of Kentucky.

Sincerely,

ALBERT B. CHANDLER III  
*Attorney General*

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FAIRFAX, VA 22032

The Hon. Alberto Gonzalez  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Judge Gonzalez:

I am writing in support of the President's nomination of Mr. David Bunning to be a United States District Court Judge for the Eastern District of Kentucky. I have known and worked with Mr. Bunning for many years. While serving as the United States Attorney for the Eastern District of Kentucky, I hired him first as a law clerk in that office, and then as an Assistant United States Attorney. In the years since, I have maintained both professional and personal contact with him.

David Bunning would bring a wealth of practical experience to the federal bench, having tried and negotiated a broad range of federal criminal and civil cases in the United States Attorney's office. His civil litigation experience will be of great benefit to the private bar, while his criminal litigation background will enable him to address knowledgeably and thoroughly the serious criminal justice matters that face a federal judge.

Mr. Bunning is serious-minded, mature, and dedicated to the law and his work. He is also fair, discrete, and careful in his handling of all matters entrusted to him. He is not afraid to make decisions, but, in doing so, is attentive and open to all sides of issues. He clearly understands the unique responsibilities of representing the United States. Throughout his career, he has demonstrated his commitment to vigorous pursuit of wrongdoers while protecting the rights of citizens, including those charged with a crime, and to protecting the public treasury from unjust claims while ensuring just claims are fairly paid.

During and since my service with the United States Attorney's office in the Eastern District, and in my prior position as a member of the House Judiciary Committee in the General Assembly of Kentucky, I have dealt with many legal professionals, including investigators, prosecutors, and judges. I can state without hesitation that Mr. Bunning's unique abilities, skill, depth of legal knowledge, and remarkable character make him an exceptional choice to be a United States Federal District Judge.

Sincerely,

LOUIS DE FALAISE

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REPUBLICAN NATIONAL COMMITTEE  
WASHINGTON, D.C. 20003  
*August 29, 2001*

Hon. Alberto Gonzales  
White House Counsel  
1600 Pennsylvania Avenue, NW  
*Washington, D.C. 20500*

Dear Judge Gonzales:

I am pleased to support the nomination of David L. Bunning as a federal district judge in Kentucky. As an attorney, banker, and resident of the eastern district of Kentucky, I know the importance of having highly qualified individuals on the bench. I predict that David Bunning will be an outstanding jurist.

I know David by reputation and action. His reputation as an Assistant United States Attorney is impeccable. He has tried more federal cases in the past ten years than most eastern Kentucky attorneys try during their careers. David's work ethic is strong, and he is always prepared. I have found him to be even-tempered and courteous.

David Bunning is a young man with integrity, experience and ability. It is refreshing to see a person put aside potential personal gain for public service. David will justify your confidence for many years to come.

Sincerely,

ROBERT M. DUNCAN

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ADAMS, STEPNER, WOLTERMANN & DUSING, P.L.L.C.  
ATTORNEYS AND COUNSELORS AT LAW  
COVINGTON, KENTUCKY 41012-0861  
*August 29, 2001*

Hon. Alberto Gonzales  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
*Washington, D.C. 20500*

Re: Hon. David L. Bunning, Judicial Nominee, U.S. District Court, Eastern District of Kentucky

Dear Judge Gonzales:

I have been practicing law in Northern Kentucky and The United States District Court for the Eastern District of Kentucky at Covington since 1974. I have known David Bunning since he was my law clerk during the summers while he was in law school at the University of Kentucky. We recruited Mr. Bunning, but our loss was the U.S. Attorney's gain.

David Bunning will make an outstanding U.S. District Court Judge. Needless to say he has all the requisite qualifications: very intelligent, analytical, honest, of the highest integrity and always fair. But beyond those requisites, Mr. Bunning brings qualities of character and upbringing that, in my opinion assure he will be an outstanding trial court judge. Mr. Bunning is patient and approachable. He is savvy but not cynical. He is sure to maintain the dignity of the court and the efficiency of the federal justice system. But just as surely he will remain sensitive to the anxieties of all that come before him.

As a federal prosecutor Mr. Bunning has been firm but fair. He has been tireless in the prosecution of some cutting edge technological crimes as well as some old fashioned nasty ones I have seen him been over backwards to protect the constitutional rights of criminal defendants as he resolutely accomplished a conviction or guilty plea and stiff sentence of those individuals. Likewise I have seen him go the extra mile in assisting victims and both state and federal law enforcement investigations.

In my opinion, Mr. Bunning's nature, personality and core beliefs assure he is virtually immune to the affliction that some of my trial lawyer colleagues refer to as "judgitis." You know of it. Its symptoms are chronic impatience and crankiness and it is brought on by constant exposure to case overload, meritless motions, unprepared attorneys and the like. Having grown up as a twin and one of two of the youngest of nine children. Mr. Bunning's unflappable personality is part of his being and is highly unlikely to change.

This is not meant to be a "puff piece" for David Bunning. I am a card carrying lifelong Democrat. I am a former chairman of the Kentucky Bar Continuing Legal Education Commission and currently serve as a Kentucky Board of Bar Examiner by appointment of the Kentucky Supreme Court to assure the continued quality of entrants to the Kentucky Bar, as well as a Master Barrister active in our local chapter of American Inns of Court. I mention these items only to shed light on my non-partisan perspective and my sincere professional interest in maintaining the very high quality of judicial talent we have been blessed with in the Eastern District of Kentucky. By any objective measure David Bunning is an excellent choice to continue this tradition. His confirmation will be good for the federal judicial system and good for its citizens.

Thank you, the Senate Committee on the Judiciary and all of the Senate in advance, for an objective consideration and an expeditious confirmation of President Bush's nomination of David L. Bunning as Judge, United States District Court for the Eastern District of Kentucky.

At your service with kindest regards I remain,  
Very Truly Yours,

GERALD F. DUSING

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LEXINGTON, KENTUCKY 40515  
*August 31, 2001*

Hon. Alberto Gonzales  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Re: Nomination of David L. Bunning to the United States District Court, Eastern District of Kentucky

Dear Judge Gonzales:

Please allow me to lend my support and endorsement of President Bush's recent appointment of David L. Bunning to the Position of United States District Judge for the Eastern District of Kentucky.

I was the United States Attorney for the Eastern District of Kentucky for eight years. and during that time David served as an Assistant United States Attorney. I found him to be an exceptional prosecutor. His work ethic is superb, and his attitude and demeanor are recommend his without hesitation.

I am sure that upon confirmation David will prove to be an outstanding jurist.  
Yours very truly,

JOSEPH L. FAMULARO

U.S. ATTORNEYS OFFICE  
SOMERSET, KY 42503-4964

The Hon. Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
SD-224  
*Washington, DC 20510*

Re: David L. Bunning, Nominee for United States District Judge, Eastern District of Kentucky

Dear Senator Leahy,

It has come to my attention that David Bunning, a nominee for United States District Judge for the Eastern District of Kentucky, has recently been rated "not qualified" for this position by the American Bar Association. I want to let you know as succinctly and concisely as possible, that as a colleague of David's, I respectfully disagree with that organization's assessment of his lack of qualifications for this position.

David has been a colleague of mine for the past then year at the U.S. Attorney's Office for the Eastern District of Kentucky. During that period of time, I have worked closely with David on numerous matters and have had a unique opportunity to observe firsthand, not only his legal skills, but his temperament, objectivity, dedication, and probably most importantly, his personal ethics. With that knowledge, I find it beyond comprehension that his qualifications would be even remotely questioned.

While David possesses excellent legal skills inside the courtroom, those skills are only enhanced by the objectivity and dedication with which he does his job. In addition, David is one of the most even tempered people that I have I have ever known, and I can say without fear of contradiction that his ethical standards are among the highest of any attorney with whom I have ever dealt.

As a colleague of David's, and as a citizen of the Eastern District of Kentucky, I respectfully request that you afford him a hearing before the Senate Judiciary Committee so that you and your colleagues on the committee will have the opportunity to determine firsthand David's qualifications for this position.

Sincerely,

MARTIN L. HATFIELD

HELLINGS & PISACANO, P.S.C.  
ATTORNEY AND COUNSELORS AT LAW  
COVINGTON, KENTUCKY 41011  
*September 4, 2001*

Hon. Alberto Gonzales  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
*Washington, D.C. 20500*

Re: David Bunning, Esq., Appointment to Federal District Bench

Dear Mr. Gonzales:

I have been asked to write a letter expressing my views of Mr. Bunning's pending appointment as Federal District Judge, for the Eastern District of Kentucky.

By way of introduction, I am a criminal attorney licensed in Ohio and Kentucky and all Federal Courts therein. I began my practice as a state prosecutor in Covington, Kentucky in 1974 and have labored in the "trenches" ever since.

My experience with Mr. Bunning has been exclusively in his capacity as an A.U.S.A. in the Eastern District of Kentucky, where I met him shortly after his appointment to the Covington, Kentucky office in 1991. Our paths have crossed on several occasions, both in court and at the negotiating table. We have been on opposite sides of several complicated cases, as such I believe I am qualified to evaluate his competence, professionalism and honesty.



Mr. Bunning possesses the unique quality of being an aggressive adversary, while being fair and open-minded. As a negotiator, he has been honorable and forthright and a credit to his office. I have no hesitation in saying I trust him.

I should further like to point out that the Criminal Bar in the Eastern District is small enough, that most of the practitioners know or are acquainted with one another. In my conversations with others in the legal community, I have heard nothing which would alter or change my opinion.

I am confident that Mr. Bunning's appointment to the Bench, will bring a man of character and integrity. I, for one look forward to practicing in front the him.

Sincerely,

HARRY P. HELLINGS, JR., ESQ.

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SARAH JACKSON  
UNION, KY 41091  
September 7, 2001

Hon. Orrin Hatch  
Ranking Member, Committee on the Judiciary  
United States Senate  
SD-152  
Washington, D.C. 20510

Dear Honorable Hatch:

I would like to take this opportunity to recommend David Bunning for the position of U.S. District Judge for the Eastern District of Kentucky. As the primary victim in the Randy Cope case, I cannot say enough about Dave Bunning. Mr. Bunning had a vision—a *special perception*. From our initial meeting, it was obvious he could feel our lives were in danger. After watching him work, his dedication and expertise truly amazed me. He was will to risk his own life to protect the lives of my family.

Working with Dave Bunning gave me a sense of protection. As the old cliché goes, "Actions speak louder than words!" Dave Bunning's actions showed that he cared about me and he cared about my son. He was truly wonderful to work with in such a time of desperation, devastation, stress, and turmoil.

After getting his own life threatened by the Cope Family, Dave Bunning continued to show his bravery and his support. Even though the federal officials felt it best for him to be removed from the case, I knew his heart was there. He is one very caring soul.

From the experience I have had with the Eastern District judges, I can assure you that Dave Bunning has worked with and been trained by some of the most educated, caring and individuals in the legal system. The judges in the Covington office appear to be united, knowledgeable, and extremely dedicated. I know Dave has that positive attitude, compassion and devotion engrained in him.

Dave Bunning is a man of character. My hat is surely off to him! He helped save our lives. Therefore, it is without reservation that I highly recommend him to fill the seat of U.S. District Judge for the Eastern District of Kentucky.

Sincerely,

SARAH JACKSON

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ADAMS, STEPNER, WOLTERMANN & DUSING, P.L.L.C.  
ATTORNEYS AND COUNSELORS AT LAW  
COVINGTON, KENTUCKY 41012-0861  
August 29, 2001

Hon. Alberto Gonzales  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Re: David Bunning

Dear Senator Leahy:

I was born and raised in Kentucky. I live in Villa Hills, a small town in Northern Kentucky with my wife and four children. My family, and my wife's family, have

lived in Northern Kentucky for generations. My children go to school in the community and will, in all likelihood, live here. I am a lawyer. I represent and defend cities, counties, police officers and elected officials in civil rights, employment and tort liability cases. I have practiced law in Kentucky for 18 years, primarily in federal court. I am a Democrat.

With this background, I feel that I am uniquely positioned to comment on President Bush's appointment of David Bunning to fill a vacancy as a federal district judge in the United States District Court for the Eastern District of Kentucky. I know David Bunning personally, and I know what this community needs, and deserves in a federal district judge.

From firsthand experience, I can attest to the fact that David Bunning is a man of integrity and honor, two attributes that are critical in maintaining respect for the judiciary and the difficult decisions that federal district judges are forced to make. David's word is his bond, and he has always demonstrated the utmost respect for the court, the lawyers he works with, and his staff. David works hard, has demonstrated a well-rounded knowledge of the law and plays by the rules. A federal district judge must possess these qualities to tackle an increasingly diverse caseload, administer justice in a timely fashion, and show the citizens that justice is blind.

David's age, energy and enthusiasm are positive attributes that should be part of the job description for a federal judge. David will be able to serve this community for many years, and the wisdom that he develops with the cases that he decides will only serve to benefit the administration of justice in the community. If David handles his docket like he has handled his cases as a prosecutor, I am confident that there will be no backlog, the litigants' arguments will be considered on their merits, and correct and appropriate decisions rendered.

Finally, and with strong conviction, I must emphasize that David Bunning has the experience, both in life and in the legal profession, to serve as a federal district judge. David is married, has children and knows what it is like to be responsible for a family and to serve a community. In his occupation, he has handled a wide variety of cases in representing the United States. I have observed him in the courtroom, and I have no doubt that he knows right from wrong, good from bad, and acceptable from unacceptable behavior.

Without question, I have a vested interest in who serves as federal district judge in my community. But my interests are noble because I believe that Northern Kentucky needs and deserves a qualified, dedicated and fair person to serve such a critical role in our judicial system. David Bunning meets our needs. I full support President Bush's appointment of David to the Bench and strongly urge the Senate to confirm his appointment.

Sincerely,

JEFFREY C. MANDO

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PARRY DEERING FUTSCHER & SPARKS, P.S.C.  
ATTORNEYS AT LAW  
COVINGTON, KY 41012-2618  
*September 7, 2001*

The Hon. Alberto Gonzalez  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Judge Gonzales:

I have been a practicing trial attorney in the Northern Kentucky-Greater Cincinnati area for almost thirty years. I am not sure that any lawyer in this area has much more trial experience than I do, and my experience has been in both federal and state courts in this area and across the nation.

I am writing to strongly recommend the nomination of David Bunning to the positions of Judge for the United States District Court, Eastern District of Kentucky.

David Bunning is a young man, but he enjoys an excellent reputation as a lawyer. He is very bright and honest, and would be an excellent federal judge.

I normally support Democratic candidates and causes, but in this situation, I am very happy to endorse Mr. Bunning. On the merits, he most surely deserves the nomination.

Thank you for reading this letter.  
Sincerely,

RON R. PARRY

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GRAYDON HEAD & RITCHEY LLP  
ATTORNEYS AT LAW  
FLORENCE, KENTUCKY 41042-1312  
*August 23, 2001*

The Hon. Alberto Gonzalez  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Re: Nomination of David L. Bunning to the United States District Court, Eastern District of Kentucky

Dear Judge Gonzalez:

Please allow me to commend the President on his appointment of David L. Bunning to fill one of the vacancies on the United States District Court, Eastern District of Kentucky.

In 13 years of practice in Kentucky, I have encountered hundreds of very capable attorneys. David unquestionably ranks in the top tier of that group. He has been an extremely hard working and successful prosecutor with the United States Attorney's Office, and his service, integrity and commitment to community are beyond reproach.

My congratulations to the President on a superb selection.

If I can be of assistance on this or any other matter in the future, please let me know.

Very truly yours,

THOMAS A. PREWITT  
*Graydon Head & Ritchey LLP*

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LEXINGTON, KENTUCKY 40047  
*November 1, 2001*

The Hon. Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
SD-224  
Washington, D.C. 20510

Re: Hon. David L. Bunning, nominee for the United States District Judge for the Eastern District of Kentucky

Dear Senator Leahy:

I am a senior Assistant United States Attorney in the Eastern District of Kentucky. I have 23 years tenure as a AUSA and currently investigator and prosecute major frauds and white collar crimes. I am sending this letter in my private capacity.

I was surprised to read in Kentucky newspapers two weeks ago that the American Bar Association had indicated to your committee that nominee Bunning was unqualified to serve as a United States District Judge. It is my understanding that my colleague, AUSA David Bunning, was found to be qualified by a substantial minority of the ABA reviewing group but that others of the group found him "unqualified" because he had not practiced law for a minimum of 12 years (news reports indicate that the 12 year practice rule is an acknowledged ABA guideline).

Upon being licensed to practice over 10 years ago, David joined the professional staff of our office. The United States Attorney's Office for the Eastern District is a medium sized office with a reputation among our client agencies for proactive and skillful litigation. We cover half the state and try cases in six geographical locations. We have a lot of experienced AUSA's and a collegian atmosphere which fosters mentoring. This office provides to its professional staffers a pure litigation experience.

We don't do wills, trusts or estates; we do not do corporate work and it is certainly not necessary for any of us to be "rain makers". Purely and simply, our function is to litigate, full time, civilly and criminally. Then years as an AUSA in this district is like the finest graduate degree in litigation one could obtain. We are constantly immersed in both the theory and technique of effective trial representation. I have been a AUSA twice; in 1971 I left this office to join a major litigation oriented commercial firm representing banks and coal interests. I quickly became aware that my intensive experience for 18 months as an AUSA allowed me to compete effectively and comfortably against skilled counsel 20 years my senior. If you want to become effective as a trial lawyer, there is no better place to become skilled than the U.S. Attorney's Office.

I relate the above to indicate to you that David's tenure as an AUSA in this district has equipped him well to serve as a district judge. David is a bright, hard working family man of 35 who is possessed of an excellent legal skills portfolio. In addition, he is a personable individual with a good sense of values, integrity and equity. To label David as "unqualified" is unfair and manifestly untrue.

I would hope that your committee would hold a hearing on Mr. Bunning's nomination. I think that you and the other committee members would be persuaded as to David's excellent qualifications by the testimony of sitting federal judges, our former U.S. Attorney and others who know David and his abilities from first hand exposure.

Sincerely,

ROBERT E. RAWLINS

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MT. WASHINGTON, KENTUCKY 40047  
October 25, 2001

Senator Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
SD-224  
Washington, D.C. 20510

Re: Judicial Nominee David Bunning

Dear Senator Leahy:

I am writing this letter to recommend to you that a hearing be conducted on the qualifications of Assistant United States Attorney David Bunning to be a United States District Judge for the Eastern District of Kentucky.

For the past sixteen years I have had the honor of being an Assistant United States Attorney for the Western District of Kentucky. During David's tenure in the Eastern District I have on numerous occasions been involved with joint investigations with David and the Covington, Kentucky, office and have been able to observe his professionalism and good judgment. Moreover, David and I have worked with the same agents from many federal investigative agencies and I know that they share the same opinion of David that I do. It has come to my attention that the American Bar Association has found David's qualifications to be unsatisfactory. Senator, as a former prosecutor yourself, I believe that you can understand the distress all of us who are his colleagues felt when we read the A.B.A. comments in a statewide newspaper. David has practiced both civil and criminal law in United States District Court for the past ten years on a day-to-day basis. From the observations of agents who work with him, judges whom he practices before, and from myself, he has acquitted himself well. It begs the question then as to how David is unqualified.

Finally Senator, I want to make you aware of a fact about David that may not be contained in much of the information you have received. That is, that David was born with a cleft-palate. Fortunately, his parents were able to get medical help for him and his disability is hardly noticeable. However, this is a disability which David has had to overcome; a disability can reach the heights David has already. Not infrequently I am confronted by parents of a child with a cleft-palate who question what modern medicine can do for their baby and whether or not he or she can live a normal life. When I am confronted by those parents, I tell them about my friend David Bunning who overcame his disability and became a trial lawyer.

Very truly yours,

RANDY REAM  
Attorney at Law

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GREENEBAUM DOLL & McDONALD PLLC  
COVINGTON, KENTUCKY, 41012-2673  
*November 26, 2001*

Hon. Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
SD-224  
*Washington, D.C. 20510*

Re: Nomination of David L. Bunning

Dear Senator Leahy:

This correspondence is forwarded to support the President's nomination of David L. Bunning to be a United States District Court Judge for the Eastern District of Kentucky.

To introduce myself, I am a lifelong, registered Democrat. I have been privileged to practice law for over twenty-five (25) years in the State and Federal Courts of Kentucky and Ohio. It has been my privilege to serve as President of the Kentucky Bar Association, to serve as an Adjunct Professor of Law at Chase College of Law and to Chair the Visiting Committees at the University of Kentucky College of Law and Chase College of Law. In the practice of law, I have primarily specialized in civil litigation, practicing regularly in the Federal Courts of the Eastern District of Kentucky and am a Life Member of the Sixth Circuit Judicial Conference.

It is without reservation and with personal and professional conviction that I author and send to you this letter to strongly encourage you and your Judiciary Committee to vote in favor of the President's nomination of David Bunning to the Federal Bench in the Eastern District of Kentucky. David Bunning has demonstrated that he has the character, integrity and intellect to meet and exceed the rigorous demands of a Federal Judge. His work in the Federal Courts is widely respected. His record of success as a litigator, primarily in criminal litigation matters in more recent years, speaks for itself.

It is interesting to note the most nominees to the Federal Bench, at least in our part of the country, naturally bring to the Bench extensive experience in civil litigation and are regularly approved on the apparent assumption that they can quickly learn and master the substance and subtleties of the criminal law in the many criminal cases that will come before them on the Bench. I respectfully submit that the converse is no less valid when applied to David Bunning and his record of excellence and achievement primarily as a Federal criminal prosecutor in the Eastern District of Kentucky. There can be no better witnesses to the esteem in which he is held as an experienced practitioner than the opinions of the experienced Federal District Judges in the Eastern District of Kentucky who have seen him "in action" in their court rooms. I am confident that you will hear from most all of them that they recognize and respect David Bunning as a lawyer possessing those personal and professional qualities and characteristics needed for the Federal Bench.

If further comment or information from me would be useful to you or your Committee regarding the nomination of David Bunning, please do not hesitate to have one of your Staff contact me at your convenience. This letter was not requested by the Nominee, but is simply an initiative which I have undertaken to lend my support and encouragement to you and your Judiciary Committee in support of David Bunning's nomination by the President because I am convinced that he has "the right stuff" and will serve with distinction on the Federal Bench, once confirmed by your Committee and the Senate.

Be assured of my appreciation to you and the Members of your Committee for your consideration of this correspondence.

Respectfully submitted,

WM. T. ROBINSON III

COVINGTON, KENTUCKY 41011  
*August 23, 2001*

Hon. Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
SD-224  
*Washington, D.C. 20510*

Hon. Orrin Hatch  
Ranking Member, Committee on the Judiciary  
United States Senate  
SD-152  
*Washington, D.C. 20510*

Mr. Neal Suit, Esq/  
Office of Legal Policy  
U.S. Dept. of Justice  
950 Pennsylvania Ave., NW  
*Washington, D.C. 20530*

Re: Judicial nomination of David Bunning, Esq., Eastern District of Kentucky,  
Covington

Dear Senator Leahy, Senator Hatch and Mr. Suit,

Please find enclosed a letter that I have forwarded to Judge Gonzales in support of David Bunning, Esq., an Assistant United States Attorney, who has been nominated by President George Bush for a judgeship here in the Eastern District of Kentucky.

While we have been blessed with good judges for many years, we need to continue this good fortune. I believe this young man possesses much promise and would give years of faithful and talented service to the judiciary. Additionally, the citizens of the Commonwealth of Kentucky would be blessed by his approval because he is truly one of us.

Thank you for your review of the enclosed and I would ask that he be confirmed quickly so that he can begin this service.

Very truly yours,

CHAS. H. SCHAFFNER

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COVINGTON, KENTUCKY 41011  
*August 23, 2001*

Hon. Alberto Gonzalez  
White House Counsel  
The White House  
1600 Pennsylvania Ave., NW  
*Washington, D.C. 20500*

Re: Judicial nomination of David Bunning, Esq., Eastern District of Kentucky

Dear Judge Gonzalez,

This letter is written in support of AUSA David Bunning who has been nominated for one of the federal judicial posts here in Kentucky. I have had the high privilege of practicing law in the Southern District of Ohio as well as both federal districts here in the Commonwealth of Kentucky. I have appeared many times before many judges and prosecutors. I believe, because of this exposure, I can and should express an opinion as to this person's qualifications. While David and I are of differing political persuasions, he being a Republican, and myself be a reconstituted, liberal Democrat, I can report to you that I believe he has those qualities needed to be able to discharge those awesome responsibilities of a federal judge.

Additionally, he has a quality, which cannot be learned, taught or assimilated quickly just because of his recent nomination. I am speaking of his *temperament*. For several years I have had some firsthand observations, which reflect that he treats his coworkers, fellow attorneys, staff, as well as accused individuals, in a Christian manner, which has been most impressive to me, a practicing attorney.

Furthermore, he is a man of his word and can be trusted to do the right thing in all situations. I sincerely hope that the members of the organized bar here in Northern Kentucky write to support his nomination because I believe he is the best person for the job. It has been a pleasure to watch his development over the past decade and while I will miss him as a prosecutor I will warmly welcome his presence when he assumes the bench. Thank you and please feel free to call or write should you need anymore information from me.

Very truly yours,

CHAS. H. SCHAFFNER

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TAFT, STETTINIUS & HOLLISTER LLP  
COVINGTON, KENTUCKY 41011-4704  
*October 19, 2001*

The Hon. Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
SD-224  
*Washington, D.C. 20510*

Re: David Bunning

Dear Senator Leahy:

Please know that I disagree strongly with the ABA's recent assessment of David Bunning's qualifications to serve as Federal District Judge. David has earned the respect and trust of his peers and "logged" thousands of hours practicing in Federal Court over the years. I have no doubt that David will serve the judiciary with the same high level of competence as he has the United States Attorney, and that those practicing in his courtroom will be treated with firm respect and absolute fairness.

I have known David for many years and though I am primarily engaged in civil litigation, I have opposed him on several criminal matters. Without exception, I found him to be tough, fair, forthright, articulate and responsive. David will bring these qualities to the bench. I have the utmost confidence that his demeanor and decisions, both civil and criminal, will exhibit his high qualifications and personal standards.

David Bunning has my strong recommendation for appointment as Federal District Judge for the Eastern District of Kentucky.

Very truly yours,

J. STEPHEN SMITH

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ARNZEN & WENTZ, P.S.C.  
ATTORNEYS AT LAW  
COVINGTON, KENTUCKY 41012-0472  
*August 30, 2001*

Hon. Alberto Gonzales  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, N.W.  
*Washington, D.C. 20500*

Dear Judge Gonzales:

It is with great pleasure that I write to you on behalf of David L. Bunning, nominee for appointment to the U.S. District Court for the Eastern District of Kentucky. I recommend his confirmation.

Since the Honorable William Bertelsman announced that he would take senior status, the legal community has been united behind the effort to fill the vacancy promptly with the best possible candidate.

Mr. Bunning's name was mentioned early as a possible candidate, and I can report to you that I have heard nothing disqualifying about him, indeed, the news of his nomination was greeted with universal approval.

Although I do not practice criminal law, and therefore have not had the pleasure of working personally with David Bunning in his role as Assistant U.S. Attorney, he and I have worked together on various professional matters, most recently at a

seminar for the local chapter of the Federal Bar Association. I have always found him pleasant to work with, reliable, and demonstrating the utmost in professionalism. Moreover, those of my colleagues who do work with David Bunning have been very complimentary of his work ethic, ability and integrity. I can think of no finer qualities for a Judge.

If you have any questions or if there is anything else that I can do, please don't hesitate to contact me.

Sincerely,

BEVERLY R. STORM  
*Arnzen & Wentz, P.S.C.*

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TALIAFERRO, MEHLING, SHIROONI, CARRAN & KEYS, PLLC  
ATTORNEYS AT LAW  
COVINGTON, KENTUCKY 41012-0466  
*October 24, 2001*

The Hon. Patrick Leahy  
Chairman  
Senate Judiciary Committee  
SD-224  
*Washington, D.C. 20510*

Dear Senator Leahy:

I have known David Bunning for a number of years. I believe that he would make an outstanding United States District Court Judge for the Eastern District of Kentucky. I worked with Dave Bunning on cases and I feel that he is exceptionally well qualified.

Even though I am a life-long Democrat, I am willing to testify before the Judiciary Committee on behalf of Dave Bunning.

Let me know if a hearing will be scheduled. Thank you.

Very truly yours,

PHILIP TALIAFERRO

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COVINGTON, KY 41011  
*August 29, 2001*

The Hon. Alberto Gonzales  
White House Counsel  
The White House  
1600 Pennsylvania Avenue, NW  
*Washington, D.C. 20500*

Re: Nomination for District Judge—Eastern District of Kentucky

Dear Hon. Judge Gonzales:

As a very young lawyer in Northern Kentucky in the 1970's, I witnessed firsthand the infighting and the struggle by various candidates to fill the position of the United States District Judge in the Eastern District of Kentucky sitting at Covington. After literally years, I was pleased to see the nomination and confirmation of Wm. O. Bertelsman who has honorably filled that position.

When Judge Bertelsman announced his senior status, I silently prayed then dreaded a repeat of that remembered troubled time within the legal community.

As a self-described 'liberal Democrat' I knew I would have to oppose any nomination by the recently inaugurated Republican occupant of the White House.

And then to my delight, my colleague, David L. Bunning, was chosen to fill this post. I have known David in excess of 12 years, both as a competent practicing attorney, advocate for his clients, and lecturer on federal issues and practices. You will certainly receive many comments attesting to his intellect, skills and effectiveness which are now his resume. But to me, for a federal judge, the most important qualities are his integrity, genuine fairness—and no hint of aloofness. The litigants and lawyers before a Judge Bunning will be treated respectfully and receive prompt attention to their pleas. The tradition of retiring Judge Bertelsman will continue.



So I am not surprised that since David's nomination announcement, there has not been a repeat of the controversy of years ago. The community and its lawyers have responded favorably and without a hint of displeasure.

It is always hard for me to find nice things to say about Republicans, but I hereby volunteer for the task to praise David L. Bunning. I commend the President for his choice and I wish David long tenure as a confirmed appointee to the bench.

Sincerely,

PAUL J. VESPER

